13-20-00199-CV

IN THE THIRTEENTH COURT OF APPEALS
CORPUS CHRISTI – EDINBURG, TEXAS

CITY OF SAN ANTONIO AND BOARD OF ADJUSTMENT
Appellants

V.

ARTURO LOPEZ AND ELIZABETH LOPEZ
Appellees

APPEALED FROM THE 45th DISTRICT COURT
BEXAR COUNTY, TEXAS
TRIAL CAUSE NO: 2019-CI-01577
THE HONORABLE CATHY STRYKER, JUDGE PRESIDING

APPELLANT, CITY OF SAN ANTONIO'S SECOND AMENDED BRIEF
ORAL ARGUMENT REQUESTED

OFFICE OF THE CITY ATTORNEY
FOR THE CITY OF SAN ANTONIO, TEXAS
Andrew Segovia, City Attorney, Texas State Bar No: 24103187
Samuel C.W. Adams, Assistant City Attorney, Texas State Bar No: 24003680
Savita Rai, Assistant City Attorney, Texas State Bar No: 24013368
401 S. Frio Street, Suite 204, San Antonio, Texas 78207
Telephone: (210) 207-7355 Facsimile: (210) 207-7358
Emails: Samuel.Adams@sanantonio.gov and Savita.Rai@sanantonio.gov

ATTORNEYS FOR APPELLANTS

IDENTITY OF PARTIES AND COUNSEL

CITY OF SAN ANTONIO
Appellant
Office of the City Attorney
401 S. Frio Street, Suite 204
San Antonio, Texas 78207
Phone: (210) 207-7355
SAMUEL C.W. ADAMS
Assistant City Attorney
Email: Samuel.Adams@sanantonio.gov
SAVITA RAI, Assistant City Attorney
Email: Savita.Rai@sanantonio.gov
Counsel for The Appellants

ARTURO & ELIZABETH LOPEZ
Appellees
LINEBERGER LAW FIRM, PLLC
1919 San Pedro Avenue
San Antonio, Texas 78212
Phone: (210) 207-7355
SAMIRA MERY LINEBERGER
Attorney at Law
Email: sml@linebergerlawfirm.com

Counsel for The Appellees

§

§

§

§

§

§

§

§

§

§

§

§

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Pages**

Statutes: **Pages**

STATEMENT OF THE CASE

Nature of the Case: The underlying case is a writ of certiorari by Appellees, under Chapter 211.011 of the Texas Local Government Code. *See* Clerk's Record, 00006, pg 00023. The writ of certiorari, however, is accompanied by a number of extraneous claims by Appellees for (1) injunctive relief staying the San Antonio municipal court's criminal and civil administrative dockets; (2) injunctive relief halting the San Antonio Code Compliance department from investigating or issuing any further tickets for violations or City ordinances; (3) a claim for inverse condemnation and takings; (4) a claim for damages; (5) a claim under 42 USC 1983, complaining of the number of the criminal citations the Appellees have received. *See* Clerk's Record 00281, pg 00303

Course of Proceeding: The trial court heard the Appellant's plea to the jurisdiction and stayed the proceedings for the writ and attached claims.

Trial Court's Disposition: The trial court denied the Appellant's plea to the jurisdiction. *See* Clerk's Record 00477, pg 00479.

ORAL ARGUMENT REQUESTED

Oral argument is requested to answer any further questions which the Court may have.

ISSUES PRESENTED FOR REVIEW

(1) Whether the trial court has jurisdiction to hear legal claims while administrative remedies are available and are being availed-of by Appellee; (2) whether a civil district court has jurisdiction to *stay* another court's docket of criminal and civil administrative cases; and (3) whether a civil district court has jurisdiction to order a City's investigative agency to stop investigating and citing persons for committing crimes.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

The Properties: The underlying lawsuit is about the ***use*** of 4 individual, multi-acre, contiguous parcels of land located in San Antonio, Texas. These properties, 5745, 5682, 5679, and 5650 Easterling Road, are owned by Arturo and Elizabeth Lopez ('Appellees'), a husband and wife. Appellees run their business, 'River City Ready Mix, Inc.,' a cement plant, on these properties. There is a flood plain which runs through several of these properties.

For completeness, please also note that Appellees lease a separate contiguous parcel of property at 5550 Easterling, which is owned by KSM properties. This property is not subject to this lawsuit, nor is KSM a party. However, because 5550 Easterling has been referenced in some of the pleadings and documents in this litigation, it is mentioned here to distinguish it from Appellees' properties and to preclude confusion.

Use of the Properties, Annexation, Zoning and NCU Rights: The above properties were annexed by the City of San Antonio on or about December 31, 1996. Upon annexation, these properties were zoned "Temp R-1," *aka*: Temporary Single-Family Residence Districts. Because Appellees' business was already established at these locations, the Appellees (and KSM) were granted non-conforming use ("NCU") rights to their property; meaning that they were allowed to continue to use the property as a cement manufacturing plant, in spite of the zoning designation which would have otherwise prohibited that type of manufacturing and industrial use.

Floodplain and NCU Violations: In January of 2018, the City became aware of

and investigated several floodplain violations committed by the Appellees on these properties. The two floodplain-specific violations were (1) dumping concrete in the floodplain, and (2) building a large, unpermitted and unauthorized ramp, for heavy duty motor-vehicle traffic, through the floodplain. These violations were addressed in a compliance agreement between the Parties. The agreement was signed on or about January 30, 2018. In the agreement, the Appellees agreed to remove these obstructions and constructions from the floodplain, and to otherwise correct these violations in a little over two months. The two plus month time-frame was negotiated by the Parties and was based upon what the Appellees stated was feasible and reasonable to complete the tasks.

The Appellees finished these remediations over two years later and received a letter from Appellant on May 28, 2020 acknowledging this.

Additional NCU Violations: Additional violations, unrelated to the floodplain, were also observed in January of 2018. Appellees were given notice of these violations and informed of the need to correct them in a timely manner. These other violations were not included in the compliance agreement because that agreement was restricted to floodplain violations. The additional violations included (1) unauthorized outside storage of personal motor vehicles; (2) the unpermitted physical expansion of, and additions made to, a garage to work on motor vehicles; (3) the expansion of the *use* of that garage to work on personal motor vehicles, whereas previously its approved *use* had been for maintenance on work vehicles directly related to the concrete business; (4) the unpermitted construction of a new office structure; (5) unauthorized outside placement

of trash and debris; and (6) the unpermitted construction of a new processing plant.

In all of these construction projects and changes of use, Appellees had not sought, applied for, or received the necessary City permits or approvals.

Approximately 94 civil administrative citations for these violations, as well as those related to the floodplain, were issued against Appellees from January 2018 until March 2018. An additional 160 criminal cases were made against Appellees from February 2018 until June 2018. As is typical of Code violations, after notice, each day that the violation continues, constitutes a new offense. *See* Chapter 1, §1-5 of the San Antonio Municipal Code. *See also for civil penalties* Chapters §54.017 and §214.0015(j) of the Texas Local Government Code. Civil and criminal cases were created in the San Antonio Municipal Court and a number have been subject to agreements between the parties.

Many of these violations continue unabated to this day.

Director's Termination of NCU Privileges: During the six months after Appellees had first been notified of these violations and about four months after they were supposed to have been remedied, these violations continued with little or no remediation by Appellees. Consequently, the Director of Development Services ("Director") revoked the Appellees' NCU privileges on June 19, 2018 and notified the Appellees of the same. Also, at that time, the Director revoked their certificate of occupancy, requiring the cessation of lawful business operations until the Appellees came into compliance.

At the Appellees request, the Director reviewed for a second time the termination of the Appellees' NCU rights. In a letter dated July 31, 2018, the Director notified the Appellees a second time of his decision to terminate their NCU rights. In that letter, he also advised the Appellees that they could appeal his decision to the Board of Adjustments ("BOA") within thirty days of his second notice of termination letter.

Board of Adjustments – Administrative Remedy One: On December 17, 2018 Appellees appeared before the BOA to contest the termination of their NCU privileges. Both the Appellees and Appellants provided evidence and testimony to the BOA, for the Board's consideration. Having heard and considered all of the evidence and testimony presented, the BOA ruled in favor of the Director's decision to terminate the Appellees' NCU privileges.

Appeal of the BOA's Order: Appellees timely filed the required appeal of the BOA's order to district court on January 24, 2019. *See* Clerk's Record, 00006, pg 00023. However, in addition to the writ of certiorari required under Chapter 211.011 of the Texas Local Government Code, Appellees also added extraneous claims for (1) an inverse condemnation and takings, (2) requests for damages, (3) an injunction against the San Antonio municipal courts to stay numerous criminal and civil cases pending there, and (4) injunctive relief to prevent the City from investigating continuing violations and issuing criminal and administrative citations. *See* "Plaintiffs [sic] Amended Petition, Petition for Review and Application for Writ of Certiorari and Petition of Injunctive Relief." *See* Clerk's Record, 00052, pg 00071. No action was taken by Appellees on

these pleadings during this time.

Rezoning Process – Administrative Remedy Two: The Appellees in the meantime began the process of applying for rezoning. The writ of certiorari, and the additional extraneous pleadings, were used as a 'placeholder,' preserving Appellees' right to appeal, while the rezoning process continued. They submitted a revised request on January 31 to rezone as part of the first phase 5745 and 5679 Easterling. The plan amendment case was considered by the Planning Commission on February 26 where the Commission recommended approval. The zoning case was considered by the Zoning Commission on March 3 and continued to April 7. Due to COVID-19, the April 7 meeting was cancelled. The case has not been rescheduled yet as the Council Office wants to be sure there is an opportunity for the neighborhood and the applicant to meet safely to discuss. The Appellees' other two properties, 5682 and 5650 Easterling Road, are to be submitted for review at an undetermined point in time.

The Appellants continued to accommodate the Appellees throughout this time, allowing the business to continue to operate. Appellants agreed to numerous extensions of time for Appellees to finish the rezoning process. The number of extensions stretched on for fourteen months. As of today's date, the rezoning application process has still not been completed.

Appellant also granted the Appellees successive limited Temporary Certificates of Occupancy (TCO), so that they could continue to legally conduct business while the rezoning process was pending. TCOs are valid for 30 days length of time. Appellant

extended the Appellees' TCO seven times during this time period.

Additionally, all of the Appellees' pending criminal and civil administrative cases in the San Antonio Municipal Courts were granted agreed-to resets on six different occasions and are still waiting a resolution.

Appellees' TRO, Writ of Certiorari, and Temporary Injunction:

With little to no progress in over a year being made by Appellees in getting the property rezoned, the Appellees were informed that the latest TCO would not be renewed after it expired on February 29, 2020. Subsequently, on February 28, 2020, they filed an emergency TRO and moved for a hearing for their Temporary Injunction. *See* Clerk's Record, 00048, pg 00051. On March 12, 2020, Appellant filed its plea to the jurisdiction. *See* Clerk's Record 00257, pg 00275. On March 16, 2020, Appellees filed a Second Amended Petition, and included in their allegations a claim under 42 USC 1983. *See* "Plaintiffs' Second Amended Original Petition, Petition for Review and Application for Writ of Certiorari and Petition for Injunctive Relief," pg 18, para. 34. *See* Clerk's Record 00281, pg 00303. After a hearing, the trial court denied Appellant's plea to the jurisdiction. *See* Clerk's Record 00477, pg 00479.

SUMMARY OF THE ARGUMENT

The Appellant's Plea to the Jurisdiction should be granted because the trial court does not have subject matter jurisdiction over any of the Appellees' claims for the following reasons. (1) Appellees have failed to exhaust their administrative remedies. (2) Appellees have not made requests for injunctive relief which overturn sovereign immunity – i.e. they have not provided adequate authority for their claims. (3) Appellees have not demonstrated harm. (4) Appellees have not provided notice to all necessary parties for their constitutional claims.

ARGUMENT AND AUTHORITIES

I. STANDARD OF REVIEW:

In Texas, sovereign immunity deprives a trial court of subject-matter jurisdiction for lawsuits in which the state or certain governmental units have been sued unless the state consents to suit. *Texas Parks & Wildlife Dep't v. Miranda*, 133 S.W.3d 217, 224 (Tex.2004). Sovereign immunity from suit defeats a trial court's subject-matter jurisdiction and is therefore properly asserted in a plea to the jurisdiction. *Miranda*, 133 S.W.3d at 225–26.

A governmental unit may take an interlocutory appeal from an order granting or denying the governmental unit's plea to the jurisdiction. *See* TEX.CIV.PRAC. & REM.CODE ANN. § 51.014(a)(8) (Vernon Supp.2000). Whether a court has subject-matter jurisdiction and whether a plaintiff has pleaded facts that affirmatively demonstrate subject-matter jurisdiction are questions of law that appellate courts review de novo. *Miranda, 133 S.W.3d* at 226. In deciding a plea to the jurisdiction, appellate courts are not to weigh the merits of the plaintiff's claims but are to consider the plaintiff's pleadings, construed in the plaintiff's favor, and evidence pertinent to the jurisdictional inquiry. *Id.* at 227–28; *County of Cameron v. Brown*, 80 S.W.3d 549, 555 (Tex.2002).

II. SOVEREIGN IMMUNITY

A city is immune from liability for its governmental actions, unless that immunity

is waived. *City of Round Rock v. Smith*, 687 S.W.2d 300, 302 (Tex.1985); *see* *City of Austin v. Daniels*, 160 Tex. 628, 335 S.W.2d 753, 754 (1960).

"[T]he waiver of governmental immunity is a matter addressed to the Legislature." *Guillory v. Port of Houston Auth.*, 845 S.W.2d 812, 813 (Tex.1993), *cert. denied*, 510 U.S. 820, 114 S.Ct. 75, 126 L.Ed.2d 43 (1993); *Lowe v. Texas Tech Univ.*, 540 S.W.2d 297, 298 (Tex.1976). "It is a well-established rule that for the Legislature to waive the State's sovereign immunity, it must do so by clear and unambiguous language." *Duhart v. State*, 610 S.W.2d 740, 742 (Tex.1980); *accord* *Welch v. State*, 148 S.W.2d 876, 879 (Tex.Civ.App.—Dallas 1941, writ ref'd); *Texas Prison Bd. v. Cabeen*, 159 S.W.2d 523, 527–528 (Tex.Civ.App.—Beaumont 1942, writ ref'd). The same rule applies, of course, to the waiver of immunity for other governmental entities. *See, e.g.*, *Mount Pleasant Indep. Sch. Dist. v. Estate of Lindburg*, 766 S.W.2d 208, 211 (Tex.1989). The Court must determine whether the Legislature has by clear and unambiguous language waived municipal immunity for the claims made in Appellees' Second Amended Petition. Unless it has done so, the Appellant is entitled to prevail.

Looking at the allegations in "Plaintiffs' Second Amended Petition, Petition for Review and Application for Writ of Certiorari and Petition of Injunctive Relief," we can distinguish those claims in which sovereign immunity is explicitly waived and those in which it is not. Clerk's Record 00281, pg 00303. Explicitly waived is the writ of certiorari of the Board's decision, under Chapter 211.011 of the Texas Local Government Code. True takings claims and true constitutional violations also penetrate sovereign

immunity, but for reasons to be discussed later, Appellees' claims do not meet the minimum thresholds for subject matter jurisdiction.

Not waived and not ripe, therefore, are (1) an inverse condemnation and takings, (2) requests for damages, (3) an injunction against the San Antonio municipal courts to stay numerous criminal and civil cases pending there, and (4) injunctive relief to prevent the City from investigating continuing violations and issuing criminal and administrative citations. Appellees' have included a claim under 42 USC 1983 in their most recent iteration as an umbrella from their injunctive claims under 3 & 4, however for various reasons, that is neither ripe or proper at this time in state court.

As the writ of certiorari would appear to be ripe for litigation, under the terms and conditions stated in the relevant Statutes, we will begin with a discussion of that claim first.

A. WRIT OF CERTIORARI NOT RIPE FOR LITIGATION:

Of the five claims made by Appellees, only one – the writ of certiorari contesting the Board's decision to revoke their NCU privileges – is waived in terms of sovereign immunity and which could be deemed ready for litigation. *See* TEXAS LOCAL GOVERNMENT CODE §211.011. And so we begin with the writ, to discuss whether in spite of this explicit waiver, it is actually ripe for litigation at this time. At first glance, it would appear to be. However, as Appellees continue to pursue rezoning, the trial court has lost subject matter jurisdiction under a harm analysis, and Appellees have made it untimely to litigate NCU privileges at this moment.

As previously stated, this lawsuit is about the *use* of properties owned by Appellees. Because of a long string of violations, mostly still unremedied, the Appellees have lost the non-conforming use ('NCU") privileges to their property. Consequently, in order to continue to use the properties for their business, there are two separate types of administrative remedies available to Appellees. Either are stand-alone remedies but both address the same issue of *use*. Appellees could: (1) contest the decision to revoke the NCU privileges to the Board of Adjustments (BOA). *See* TEXAS LOCAL GOVERNMENT CODE §211.011; and/or (2) go through the process to rezone the property with the Zoning Commission. *See* SAN ANTONIO UNIFORM DEVELOPMENT CODE, §35-301 et. seq.; *see also* TEXAS LOCAL GOVERNMENT CODE §211.001 et seq. They have done both.

The first administrative remedy, contesting the revocation of their NCU privileges to the BOA was done in December of 2018 and could in normal circumstances have been litigated after the Board's decision to deny their appeal. Appellees chose not to, and instead actively pursued the process of rezoning. The second administrative remedy, rezoning the properties, is still on-going.

These are two different types of administrative remedies, of course. The first is a legislatively mandated step prior to litigation. Rezoning itself is an alternative administrative remedy which can be a prelude to the necessary legislative act of creating a zone. However, the effect of pursuing both remedies is to deprive the trial court of subject matter jurisdiction because Appellee cannot show harm; i.e. an irreparable injury

to a vested property right.

Stated another way, the question before the Court is whether it is proper to hear a lawsuit on the former administrative remedy (BOA/NCU) while the latter administrative remedy (rezoning) is still on-going. Because Appellees have chosen to pursue both remedies and have not abandoned the rezoning remedy, Appellees cannot show an immediate and irreparable injury to a vested property right. Consequently, litigation is not ripe to commence at this time.

For a Plaintiff to bring a lawsuit, a threshold question is whether they have standing to do so. *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 443 (Tex.1993). Standing is a component of subject-matter jurisdiction. *Douglas v. Delp*, 987 S.W.2d 879, 882 (Tex.1999); *OAIC Commercial Assets, L.L.C. v. Stonegate Vill., L.P.*, 234 S.W.3d 726, 735 (Tex.App.-Dallas 2007, pet. denied); *see also DaimlerChrysler Corp. v. Inman*, 252 S.W.3d 299, 304 (Tex.2008) ("A court has no jurisdiction over a claim made by a plaintiff without standing to assert it."). Standing cannot be waived. *See OAIC*, 234 S.W.3d at 735; *see also Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 445–46 (Tex.1993).

"The requirement in this State that a plaintiff have standing to assert a claim derives from the Texas Constitution's separation of powers among the departments of government, which denies the judiciary authority to decide issues in the abstract, and from the Open Courts provision, which provides court access only to a "person for an injury done him". A court has no jurisdiction over a claim made by a plaintiff without

standing to assert it. For standing, a plaintiff must be personally aggrieved; his alleged injury must be concrete and particularized, actual or imminent, not hypothetical." *See DaimlerChrysler Corp v. Inman*, 252 SW3d 299, 304-305, (Tex 2008).

Determining standing is a question of law. *Brunson v. Woolsey*, 63 S.W.3d 583, 587 (Tex.App.-Fort Worth 2001, no pet.). The Plaintiff must belong to a class of persons who can claim an injury. In the instant case, the Appellee asserts that the "injury" is that they have lost NCU privileges to their property. *See* Plaintiffs' Second Amended Petition. Clerk's Record 00281, pg 00303. However, the Appellees are conducting business on the property, the same as before, pending the appeal of the BOA's decision. For standing purposes, the harm threatened must be actual or imminent. That is not the case here. There is no harm in the present sense of the word: as previously stated, Appellees are still using their property as previously and will continue to do so until the writ is heard and/or the zoning question is decided.

Furthermore, Appellees are pursuing the rezoning process. If that is successful, the BOA appeal will be moot. While Appellees continue the administrative process and remedy of rezoning, that should act as a stay to litigating the NCU writ of certiorari.

B. FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES

It is necessary for the administrative aspects of this case to be resolved before any of these claims may proceed. In this case, Appellees have chosen to apply for the administrative remedy of rezoning. As previously stated, this does not fit into a statutory scheme in which the party *must* go through a particular administrative process before

litigation can commence. However, because Appellees have voluntarily chosen to apply for this administrative remedy and have not abandoned it, under the principals of exhausting administrative remedies and not wasting judicial resources, Appellees various claims are not ripe at this time. They must either finish the rezoning process or abandon it. In the meantime, to proceed to litigation at this time is to risk everything being litigated becoming moot.

It is of long-standing precedent that parties must exhaust administrative remedies before a lawsuit is ripe. "The general rule is that where a statute creates an administrative remedy available to plaintiff, the plaintiff must first exhaust his administrative remedy before the district court has subject matter jurisdiction over the dispute." *Garcia–Marroquin v. Nueces County Bail Bond Bd.*, 1 S.W.3d 366, 375, (Tex.App.—Corpus Christi 1999, no pet.); *see also Texas Educ. Agency v. Cypress–Fairbanks Indep. Sch. Dist.*, 830 S.W.2d 88, 90 (Tex.1992).

The doctrine of exhaustion of administrative remedies is well-established. "The doctrine provides that no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted." *McKart v. U.S.*, 395 U.S. 185, 193, 89 S.Ct. 1657, 23 L.Ed.2d 194 (1969).

"An administrative action must be final before it is judicially reviewable. The finality requirement is concerned with whether the initial decision maker [City Council] has arrived at a definitive position on the issue that inflicts an actual concrete injury." *City of El Paso v. Madero Development*, 803 S.W.2d 396, 399 (Tex.App. – El

Paso 1991). In the present case, the ultimate issue is the *use* of the property. The Appellees are still going through the administrative process and remedy of rezoning to fix the *use*. They cannot show finality or actual harm in the meantime.

C. INVERSE CONDEMNATION AND TAKINGS NOT RIPE

Specifically, regarding Inverse Condemnation and Takings claims, those especially must wait for the administrative process to be finished before they may be pursued. *Dallas v. Stewart*, 361 SW3d 562, 579 (Tex 2012). Although agencies have no power to preempt a court's constitutional construction, a party asserting a taking must first exhaust its administrative remedies and comply with jurisdictional prerequisites for suit. Litigants must avail themselves of statutory remedies that may moot their takings claim, rather than directly institute a separate proceeding asserting such a claim. *See City of Dall. v. VSC*, 347 S.W.3d 231, 234–37 (Tex.2011). *See also Cent. Power & Light Co. v. Sharp*, 960 S.W.2d 617, 618 (Tex. 1997); *City of Dallas v. VSC*, 347 S.W.3d 231, 234-237 (Tex. 2011); *Garcia v. City of Willis*, 593 S.W.3d 201, 210 (Tex. May 3, 2019) (inquiry is whether administrative hearing officer had authority to render Plaintiff's constitutional takings claim moot before seeking judicial enforcement). For the Texas Supreme Court, if an administrative or remedial procedure could resolve the need for a takings suit, then the property is not taken without just compensation prior to the use of the administrative procedure. See *City of Dallas v. Stewart* at 579; *see also City of Dallas v. VSC* at 237.

In a similar vein, Appellees cannot bring an inverse condemnation case to court

while they are in the process of rezoning. If they are successful, there is no case as there are no facts which would support such a claim. In the meantime, the Appellees continue to conduct business on their properties without any impediment, and therefore there is no harm.

If they fail in rezoning the property, the takings claims fail as well. The zoning classification for Appellees' property occurred over twenty years ago – the statute of limitations has long since passed. *See* TEX. CIV. PRAC. & REM.CODE ANN. § 16.026 (Vernon 1986).

And if the Appellees then proceed with the writ for the NCU privileges revocation, there still is no takings claim. Either the Appellees violated the NCU covenant and lost their privileges by their own malfeasance and consequently have no claim, or the trial court restores those privileges which the Appellees have been enjoying during the pendency of this process the whole time.

D. CONSTITUTIONAL CLAIMS AGAINST CHAPTER 54 AND LOCAL ORDINANCES

Failure to exhaust administrative remedies necessary. Next, we review Appellees federal constitutional claim for a 14th Amendment violation under 42 USC 1983. Considering that this claim was only recently added, and post-dates all other claims including the injunctive requests against the San Antonio municipal court, I believe that we can view this allegation with a measure of skepticism.

These claims cannot proceed to state court until all administrative remedies are exhausted. *See Clint. Indep. School Dist. v Marquez*, 487 S.W.3d 538, 551, 552-553 (Tex 2016). "In these two cases, the Supreme Court held that a state-law exhaustion-of-remedies requirement does not apply to deprive *federal courts* of jurisdiction over a *federal claim* for constitutional violations under 42 U.S.C § 1983. *Damico*, 389 U.S. at 417, 88 S.Ct. 526; *McNeese*, 373 U.S. at 671, 83 S.Ct. 1433." *Id* [emphasis added]. As Appellees are pursuing administrative remedies, it is not ripe for the state trial court to consider these allegations at this time.

Further issues with Appellees' constitutional challenges and requests for relief. Looking past the federal constitutional gloss, and at the actual injunctive relief sought – (1) ordering a stay on another court's trial docket and (2) ordering the City of San Antonio's Code department to cease investigating and issuing citations for violations of the City's ordinances – there are significant questions as to how exactly the trial court could ever have the jurisdiction to do so. Certainly, the Appellees have not provided any adequate legal authority – especially as the Appellees have not alleged that the laws themselves are unconstitutional.

And what are the types of violations which the Appellees are asking injunctive relief from? These are criminal violations which are mostly unrelated to the central issue here, which is of the *use* of the properties for commercial and manufacturing purposes – i.e. zoning issues. The citations Appellees complain of are for violations such as unpermitted outside storage; building various physical structures without permits, such

as the unpermitted construction of a new office building and the unpermitted construction of a new processing plant; the unauthorized outside placement of trash and debris. These are violations which the Appellees committed and are constant regardless of what type of zoning the Appellees are moving to reclassify their property to. They cannot rezone their properties into compliance for a wild, unpermitted building and littering spree. Or stated another way, even if they were zoned correctly for what Appellees want to do, they would still be in violation of the law.

These are class C misdemeanors set in a municipal court of record. Some of them are civil settings before Administrative Hearing Officers (AHOs). These cases are heard by Judges and AHOs who are all currently licensed lawyers (as opposed to JPs). These courts are bound by the Code of Criminal Procedure and the defendants there are afforded all their constitutional rights – including due process. The proper place to engage in constitutional challenges – whether 'as applied' or in general – is in the courts that they are set, NOT in a separate court in a separate proceeding. The Appellees have not pled any extraordinary circumstance which would taint the San Antonio municipal court or otherwise necessitate its exclusion from considering these criminal cases on its dockets.

Ordering a stay on another court's criminal docket is not a valid exercise of the trial court's jurisdiction. It is settled law that courts of equity will not by temporary or permanent injunction stay prosecution of criminal proceedings except "where the statute under which the complainant is being prosecuted is unconstitutional, or for any other reason void, and the prosecution involves a direct invasion of property rights which will

result in an irreparable injury thereto." *Ex Parte Sterling*, 53 S.W.2d 294, 295 (Tex. 1932); *see also Townsend v. McDonald*, 149 S.W.2d 1038, 1039 (Tex. Civ. App. – San Antonio 1941) (temporary injunction will not enjoin a penal statutes and ordinances, even if void, unless the enforcement of the act will have irreparably harmed the property rights). In other words, civil courts have jurisdiction to grant relief "only where the ordinance attacked is void upon its face, and the threatened enforcement thereof will necessarily work instant and substantial and irreparable injury to material vested rights of the parties complaining." *City of San Antonio v. Teague*, 54 S.W.2d 566, 568 (Tex. Civ. App – San Antonio 1932). The exercise of an injunction that stays criminal proceedings is incidental to the main ground upon which equity jurisdiction exists: protecting property rights from threatened and irreparable injury stemming from the enforcement of a void law. *Id*.

Appellees have not alleged the necessary prerequisites to meet this test. They do not claim that the law is void or unconstitutional, and they cannot show that they have suffered any harm at this time – nor that their "harm" of going through the criminal courts is any different than any other scoff-law.

Ordering the City from enforcing its own laws is not within the trial court's jurisdiction. As with criminal proceedings, a civil court will not enjoin the enforcement of a civil statute that is valid. *Southwestern Associated Telephone Co. v. City of Dalhart*, 254 S.W.2d 819, 826 (Tex. Civ. App. – Amarillo 1952, writ ref'd n.r.e.) ("Injunction

against the enforcement or execution of a valid statute or ordinance would encroach upon legislative functions, and a writ will not be granted for such purpose however unwise or inexpedient the law may be.") If the law is passed under the constitutional, statutory, or charter authority conferred upon the government, the law cannot be void within the meaning of enforcing an injunction. *City of Wichita Falls v. Bowen*, 182 S.W.2d 695, 698 (Tex. 1944). "Unless it is void, it can be questioned only by a direct suit in the nature of a quo warranto proceeding, or in a proceeding to which the State is a party. *Id*. The reasoning behind this separation of powers is that:

> "to perpetually enjoin the enforcement of a law is to annul the law by judicial decree; such a power as this belongs to the legislative department, which enacts laws, and at its will annuls them by repeal. The judicial power construes and applies the law, but it cannot decree that an enactment of the legislature shall not be enforced by the courts, so as to thereby directly operate upon the constitutional appliances of government for its administration…[the courts] have no power whereby they may decree that legislative action shall, in effect, be directed and controlled by the interposition of a judicial veto." *Jones v. Stallsworth*, 55 Tex. 138 (1881) (injunction suit brought against the justice of the peace to enjoin him from powers conferred upon him by legislative act).

It is also a generally held rule that the "official representatives of a state cannot be restrained from the performance of a duty placed upon them by a valid statutory enactment." *Cochran v. Cavanaugh*, 252 S.W. 284, 286 (Tex. Civ. App. – Dallas 1923).

Accordingly, the Appellees' request that the court order an enforcing agency to cease investigating and to cease citing for violations of the law is to entice the trial court into gross over-reach and abuse of discretion. They have not pled any facts which would show a right for Appellees to not be held accountable for breaking the law, just like any

other property owner. Or an abuse by Code Enforcement in doing their job which might account for a rare injunctive action.

No notice to necessary parties. Even were it the case that the state court could review these "constitutional" violations, there is an underlying problem with notice. Appellees claim that the law itself is not unconstitutional but rather its application. *See* pg 15, para. 28, Plaintiffs' Second Amended Original Petition, etc. Clerk's Record 00281, pg 00303. However, the application of the law which they complain of – that each day that the violation continues after notice, constitutes a new violation – is legislatively sanctioned in the enabling statute itself. *See* Chapter 54.0001, Local Government Code. Moreover, it is of universal practice among municipalities' Code departments state-wide and nation-wide. Consequently, the Appellees' challenge is not a simple 'as applied challenge' localized to the City of San Antonio, but it challenges the language and application of the enabling statute. Why is that an issue? Because the Appellees have not provided notice to all the necessary parties.

Under the Uniform Declaratory Judgment Act (UDJA) notice is necessary to the State Attorney General's office. This is mandatory. The authority to hear civil suits on the validity of city ordinances (& the waiver of sovereign immunity) originates from the Uniform Declaratory Judgment Act (UDJA). TEX. CIV. PRAC. & REM. § 37.004. Typically, these are sui generis actions which must be attached to other justiciable claims. *See Texas Mun. Power Agency v. Public Utility Com'n*, 100 SW3d 510, 519 (Tex. App. – Austin 2003)(general authority of civil district courts to hear UDJA cases). TEX. CIV.

PRAC. & REM. § 37.006 (a) (b).

Appellees have not provided notice of this constitutional challenge to the Attorney General's office, of their claims against Chapter 54 of the Texas Local Government Code nor of their claims against the local ordinances which devolve from it. As stated by the Texas Supreme Court: "[i]n any proceeding that involves the validity of a municipal ordinance or franchise, the municipality must be made a party and is entitled to be heard, and if the statute, ordinance, or franchise is alleged to be unconstitutional, the attorney general of the state must also be served with a copy of the proceeding and is entitled to be heard." *See* *Wichita Falls State Hosp. v. Taylor*, 106 S.W.3d 692, 697–698 (Tex.2003).

The Appellees' constitutional challenge is to Chapter 54 itself, the language, the long standing interpretation and application of it. Because this challenge goes far beyond the City of San Antonio, and its ordinances, notice must be given to other governmental entities who rely on this language in Chapter 54 for the enforcement of their own laws. Such necessary parties include every municipality, township and county throughout the state of Texas who rely on and enforce their local laws through this chapter.

Under the provisions it would be rare indeed if there were a person whose presence was so indispensable in the sense that his absence deprives the court of jurisdiction to adjudicate between the parties already joined. *See* *Pirtle v. Gregory*, 629 S.W.2d 919, 920 (Tex.1982) (quoting *Cooper v. Texas Gulf Industries, Inc.*, 513 S.W.2d 200 (Tex.1974)). Nevertheless, there are rare cases in which failure to name an indispensable

party will deprive a court of jurisdiction, and such an instance is where a party responsible for enforcing a statute is not named in an action to declare that statute unconstitutional. *See* *Lone Starr Multi Theatres, Inc. v. State*, 922 S.W.2d 295, 297 (Tex.App.—Austin 1996, no writ).

In the instant case and procedural context, the Texas Attorney General and all enforcement agencies which rely on Chapter 54 of the Texas Local Government code to enforce local laws, are necessary parties to a suit alleging the law is unconstitutional, and it is required that notice of this lawsuit be given to them. *See also* Tex. Civ. Prac. & Rem. Code Ann. §37.006 (a) and (b).

PRAYER

WHEREFORE, PREMISES CONSIDERED, Appellant prays that the Court REVERSE the trial court's denial of the Appellant's plea to the jurisdiction, GRANT the Appellant's plea to the jurisdiction, and stay the underlying claims and pleadings of the Appellees until such time as all administrative remedies have been completed and the matters are ripe.

Respectfully submitted,
/s/ Samuel Adams
SAMUEL ADAMS
State Bar No. 24003680
SAVITA RAI
State Bar No. 24013368
OFFICE OF THE CITY ATTORNEY
401 S. Frio, Room 204
San Antonio, Texas 78207
Phone: (210) 207-7355 - Fax: (210) 207-7358
ATTORNEYS FOR APPELLANT, CITY OF SAN ANTONIO

CERTIFICATE OF COMPLIANCE

Pursuant to TEX. R. APP. P. 9.4, I hereby certify that the APPELLANT, CITY OF SAN ANTONIO'S AMENDED BRIEF contains 7,121words. This is a computer-generated document created in Microsoft Word, and it uses 14-point Times New Roman font for all text in the body and 12-point font for footnotes. In making this certificate of compliance, I am relying on the word count provided by the software used to prepare the document.

/s/ Samuel Adams
Samuel Adams

LIST OF ATTACHMENTS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served on the following on the 30th day of July 2020: ***Appellants' Amended Oral Argument Request.***

Samira Mery Lineberger
Lineberger Law Firm, PLLC
1919 San Pedro
San Antonio, Texas 78212
PH; (210) 735-9911
Fax:(866) 748-3788
Email: sml@linebergerlawfirm.com

☒ E-FILE

☒ Electronic mail

Attorney for Appellees'

/s/ Samuel Adams
Samuel Adams, Attorney for Appellant

EXHIBIT #1

ORDER OF THE COURT HONORABLE C. STRYKER

CAUSE NO. 2019-CI-01577

ARTURO LOPEZ AND ELIZABETH LOPEZ	§ § §	IN THE DISTRICT COURT
VS.	§ §	45th JUDICIAL DISTRICT
BOARD OF ADJUSTMENTS FOR THE CITY OF SAN ANTONIO AND THE CITY OF SAN ANTONIO	§ § §	BEXAR COUNTY, TEXAS

ORDER DENYING DEFENDANT'S PLEA TO THE JURISDICTION

On March 12, 2020 the court heard Defendants' Amended Plea to the Jurisdiction in Reply to Plaintiffs' Response filed in the instant suit under the misnomer "Plaintiffss' Amended Plea to the Jurisdiction in Reply to Plaintiff's Response" (hereinafter "Defendants' Plea to the Jurisdiction"). After considering the pleadings, evidence and argument of counsel, the Court is of the opinion that Defendants' Plea to the Jurisdiction should be denied.

IT IS THEREFORE ORDERED that Defendants' Plea to the Jurisdiction is denied.

MAR 2 3 2020

SIGNED on the ______ day of ____________________, 2020

JUDGE PRESIDING

APPROVED AS TO FORM:

LINEBERGER LAW FIRM, PLLC
1919 San Pedro Avenue
San Antonio, Texas 78212
Office: (210) 735-9911
Facsimile: (866) 748-3788

By: Samira Mery Lineberger
State Bar No. 13968970

Email: sml@linebergerlawfirm.com
Mobile: (210) 365-9700
ATTORNEY FOR PLAINTIFFS

CITY OF SAN ANTONIO
Andrew Segovia, City Attorney
Office of the City Attorney
401 S. Frio Street, Suite 204
San Antonio, Texas 78207

____
By: Savita Rai
Assistant City Attorney
SBN: 24013368
Email: Savita.Rai@sanantonio.gov
Samuel C. W. Adams
Assistant City Attorney
SBN: 24003680
Email: Samuel.Adams@sanantonio.gov
ATTORNEY FOR DEFENDANTS
CITY OF SAN ANTONIO

CERTIFICATE OF SERVICE

The foregoing pleading was served on all parties and/or lead counsel of record in accordance with the Texas Rules of Civil Procedure as follows, on the 19th day of March, 2020:

VIA FACSIMILE @ (210) 207-7358
Andrew Segovia, City Attorney
Savita Rai
Office of City Attorney
401 S. Frio Street, Suite 204
San Antonio, Texas 78207
Attorney for Defendants

Samira Mery Lineberger

Stryker 224

JUDGE'S NOTES

1 1/2 - 2 hrs on plea to jurisdiction only

Cause Number: 2019CI01577 Court: 045 Date/Time: 03/12/2020 09:00AM

Setting Court: 109

Style: ARTURO LOPEZ ET AL VS. BOARD OF ADJUSTMENTS FOR THE CITY OF SAN ANTONIO E

Attorney(s) For Case

SAMIRA LINEBERGER
SAMUEL ADAMS

SAVITA RAI

FILED
DISTRICT CLERK
BEXAR CO. TEXAS
20 MAR 12 AM 10:03
BY _____ DEPUTY SL

Type of Motion or Application: NON-JURY SETTING ON ~~TRO~~

AGREED ORDER _____ RECORD TAKEN _____

INTERPRETER _____ RESET DATE _____

DATE OF NOTES _____ JUDGE INITIALS _____

TRO extended 14 days or until further order of the court.

Bond to continue.

add'l Briefing Monday + possibly Response

3/19/20

Defendant's Plea to the Jurisdiction is Denied.

EXHIBIT #2

TEXAS LOCAL GOVERNMENT CODE

§ Chapter 54, Subchapter B

LOCAL GOVERNMENT CODE

TITLE 2. ORGANIZATION OF MUNICIPAL GOVERNMENT

SUBTITLE D. GENERAL POWERS OF MUNICIPALITIES

CHAPTER 54. ENFORCEMENT OF MUNICIPAL ORDINANCES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 54.001. GENERAL ENFORCEMENT AUTHORITY OF MUNICIPALITIES; PENALTY. (a) The governing body of a municipality may enforce each rule, ordinance, or police regulation of the municipality and may punish a violation of a rule, ordinance, or police regulation.

(b) A fine or penalty for the violation of a rule, ordinance, or police regulation may not exceed $500 except that:

(1) a fine or penalty for the violation of a rule, ordinance, or police regulation that governs fire safety, zoning, or public health and sanitation, other than the dumping of refuse, may not exceed $2,000; and

(2) a fine or penalty for the violation of a rule, ordinance, or police regulation that governs the dumping of refuse may not exceed $4,000.

(c) This section applies to a municipality regardless of any contrary provision in a municipal charter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 7(a), 87(e), eff. Aug. 28, 1989.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 680 (H.B. 274), Sec. 1, eff. September 1, 2015.

Sec. 54.002. IMPOSITION OF FINE IN TYPE B GENERAL-LAW MUNICIPALITY. (a) The governing body of a Type B general-law municipality may prescribe the fine for the violation of a municipal bylaw or ordinance.

(b) If a defendant in a Type B general-law municipality demands a jury trial, the fine may be imposed only on the verdict of a jury.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 54.003. REMISSION OF FINE BY TYPE A GENERAL-LAW MUNICIPALITY. On a two-thirds vote of the members present, the governing body of a Type A general-law municipality may remit a fine or a penalty, or a part of a fine or penalty, imposed or incurred under law or under an ordinance or resolution adopted in accordance with law.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 54.004. PRESERVATION OF HEALTH, PROPERTY, GOOD GOVERNMENT, AND ORDER IN HOME-RULE MUNICIPALITY. A home-rule municipality may enforce ordinances necessary to protect health, life, and property and to preserve the good government, order, and security of the municipality and its inhabitants.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 54.005. NOTICES TO CERTAIN PROPERTY OWNERS. (a) A governmental entity that is required by statute, rule, regulation, or ordinance to send a notice to an owner of real property for the purpose of enforcing a municipal ordinance may include the following statement in the notice: "According to the real property records of _____ County, you own the real property described in this notice. If you no longer own the property, you must execute an affidavit stating that you no longer own the property and stating the name and last known address of the person who acquired the property from you. The affidavit must be delivered in person or by certified mail, return receipt requested, to this office not later than the 20th day after the date you receive this notice. If you do not send the affidavit, it will be presumed that you own the property described in this notice, even if you do not." The notice must be delivered in person or by certified mail, return receipt requested.

(b) If a governmental entity sends a notice to the owner of the property to which the notice relates, as shown on or after the 10th day before the date notice is sent by the real property records of the county in which the property is located, and the record owner no longer owns the property, the record owner shall execute an affidavit provided with the notice by the governmental entity stating:

(1) that the record owner no longer owns the property; and

(2) the name and last known address of the person who acquired the property from the record owner.

(c) The record owner shall deliver the affidavit in person or by certified mail, return receipt requested, to the governmental entity not later than the 20th day after the date the record owner receives the notice.

(d) If the governmental entity receives an affidavit under Subsection (c), the governmental entity shall send the appropriate notice to the person named in the affidavit as having acquired the property. A notice sent under this subsection must include the statement authorized by Subsection (a).

(e) A governmental entity that receives an affidavit under Subsection (c) shall:

(1) maintain the affidavit on file for at least two years after the date the entity receives the affidavit; and

(2) deliver a copy of the affidavit to the chief appraiser of the appraisal district in which the property is located.

(f) A governmental entity is considered to have provided notice to a property owner if the entity complies with the statute, rule, regulation, or ordinance under which the notice is sent and if it:

(1) complies with Subsection (a) and does not receive an affidavit from the record owner; or

(2) complies with Subsection (d) and does not receive an affidavit from the person to whom the notice was sent under Subsection (d).

(g) If a governmental entity complies with this section and does not receive an affidavit under Subsection (c), the record owner is presumed to be the owner of the property for all purposes to which the notice relates.

(h) For purposes of this section, "real property" does not include a mineral interest or royalty interest.

Added by Acts 1991, 72nd Leg., ch. 486, Sec. 1, eff. Aug. 26, 1991.

Sec. 54.006. NONSEVERABILITY OF CERTAIN CONSOLIDATED OFFENSES. Section 3.04(a), Penal Code, does not apply to two or more offenses consolidated or joined for trial under Section 3.02, Penal Code, if each of the offenses is:

(1) for the violation of an ordinance described by Section 54.012;

(2) punishable by fine only; and

(3) tried in a municipal court, regardless of whether the court is a municipal court of record.

Added by Acts 2001, 77th Leg., ch. 413, Sec. 4, eff. Sept. 1, 2001.

SUBCHAPTER B. MUNICIPAL HEALTH AND SAFETY ORDINANCES

Sec. 54.012. CIVIL ACTION. A municipality may bring a civil action for the enforcement of an ordinance:

(1) for the preservation of public safety, relating to the materials or methods used to construct a building or other structure or improvement, including the foundation, structural elements, electrical wiring or apparatus, plumbing and fixtures, entrances, or exits;

(2) relating to the preservation of public health or to the fire safety of a building or other structure or improvement, including provisions relating to materials, types of construction or design, interior configuration, illumination, warning devices, sprinklers or other fire suppression devices, availability of water supply for extinguishing fires, or location, design, or width of entrances or exits;

(3) for zoning that provides for the use of land or classifies a parcel of land according to the municipality's district classification scheme;

(4) establishing criteria for land subdivision or construction of buildings, including provisions relating to street width and design, lot size, building width or elevation, setback requirements, or utility service specifications or requirements;

(5) implementing civil penalties under this subchapter for conduct classified by statute as a Class C misdemeanor;

(6) relating to dangerously damaged or deteriorated structures or improvements;

(7) relating to conditions caused by accumulations of refuse, vegetation, or other matter that creates breeding and living places for insects and rodents;

(8) relating to the interior configuration, design, illumination, or visibility of business premises exhibiting for viewing by customers while on the premises live or mechanically or electronically displayed entertainment intended to provide sexual stimulation or sexual gratification;

(9) relating to point source effluent limitations or the discharge of a pollutant, other than from a non-point source, into a sewer system, including a sanitary or storm water sewer system, owned or controlled by the municipality;

(10) relating to floodplain control and administration, including an ordinance regulating the placement of a structure, fill, or other materials in a designated floodplain;

(11) relating to animal care and control; or

(12) relating to water conservation measures, including watering restrictions.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 343, Sec. 1, eff. June 14, 1989; Acts 1991, 72nd Leg., ch. 753, Sec. 3, eff. June 16, 1991; Acts 1993, 73rd Leg., ch. 472, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 135 (S.B. 654), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1396 (H.B. 1554), Sec. 1, eff. September 1, 2013.

Reenacted and amended by Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 12.001, eff. September 1, 2015.

Sec. 54.013. JURISDICTION; VENUE. Jurisdiction and venue of an action under this subchapter are in the district court or the county court at law of the county in which the municipality bringing the action is located.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 54.014. PREFERENTIAL SETTING. If the municipality submits to the court a verified motion that includes facts that demonstrate that a delay will unreasonably endanger persons or property, the court shall give a preference to the action brought by the municipality when setting cases filed under this subchapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 54.015. PROCEDURE. (a) The only allegations required to be pleaded in an action brought under this subchapter are:

(1) the identification of the real property involved in the violation;

(2) the relationship of the defendant to the real property or activity involved in the violation;

(3) a citation to the applicable ordinance;

(4) a description of the violation; and

(5) a statement that this subchapter applies to the ordinance.

(b) The standard of proof is the same as for other suits for extraordinary relief.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 54.0155. EXPEDITED PROCEEDINGS FOR CERTAIN CIVIL ACTIONS. (a) A court shall expedite any proceeding, including an appeal in accordance with Subsection (b), related to a suit brought under this subchapter for the enforcement of an ordinance adopted by a municipality with a population of 500,000 or more relating to dangerously damaged or deteriorated structures or improvements as described by Section 54.012(6).

(b) An appeal of a suit described by Subsection (a) is governed by the procedures for accelerated appeals in civil cases under the Texas Rules of Appellate Procedure. The appellate court shall render its final order or judgment with the least possible delay.

Added by Acts 2019, 86th Leg., R.S., Ch. 1273 (H.B. 36), Sec. 2, eff. June 14, 2019.

Sec. 54.016. INJUNCTION. (a) On a showing of substantial danger of injury or an adverse health impact to any person or to the property of any person other than

the defendant, the municipality may obtain against the owner or owner's representative with control over the premises an injunction that:

(1) prohibits specific conduct that violates the ordinance; and

(2) requires specific conduct that is necessary for compliance with the ordinance.

(b) It is not necessary for the municipality to prove that another adequate remedy or penalty for a violation does not exist or to show that prosecution in a criminal action has occurred or has been attempted.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 54.017. CIVIL PENALTY. (a) In a suit against the owner or the owner's representative with control over the premises, the municipality may recover a civil penalty if it proves that:

(1) the defendant was actually notified of the provisions of the ordinance; and

(2) after the defendant received notice of the ordinance provisions, the defendant committed acts in violation of the ordinance or failed to take action necessary for compliance with the ordinance.

(b) A civil penalty under this section may not exceed $1,000 a day for a violation of an ordinance, except that a civil penalty under this section may not exceed $5,000 a day for a violation of an ordinance relating to point source effluent limitations or the discharge of a pollutant, other than from a non-point source, into a sewer system, including a sanitary or storm water sewer system, owned or controlled by the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 472, Sec. 2, eff. Sept. 1, 1993.

Sec. 54.018. ACTION FOR REPAIR OR DEMOLITION OF STRUCTURE. (a) The municipality may bring an action to compel the repair or demolition of a structure or to obtain approval to remove the structure and recover removal costs.

(b) In an action under this section, the municipality may also bring:

(1) a claim for civil penalties under Section 54.017; and

(2) an action in rem against the structure that may result in a judgment against the structure as well as a judgment against the defendant.

(c) The municipality may file a notice of lis pendens in the office of the county clerk. If the municipality files the notice, a subsequent purchaser or mortgagee who acquires an interest in the property takes the property subject to the enforcement proceeding and subsequent orders of the court.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1054 (S.B. 173), Sec. 1, eff. September 1, 2011.

Sec. 54.019. IMPRISONMENT; CONTEMPT. (a) A person is not subject to personal attachment or imprisonment for the failure to pay a civil penalty assessed under this subchapter.

(b) This subchapter does not affect the power of a court to imprison a person for contempt of valid court orders or the availability of remedies or procedures for the collection of a judgment assessing civil penalties. The remedies under Section 31.002, Civil Practice and Remedies Code, are preserved.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 54.020. ABATEMENT OF FLOODPLAIN VIOLATION IN MUNICIPALITIES; LIEN. (a) In addition to any necessary and reasonable actions authorized by law, a municipality may abate a violation of a floodplain management ordinance by causing the work necessary to bring real property into compliance with the ordinance, including the repair, removal, or demolition of a structure, fill, or other material illegally placed in the area designated as a floodplain, if:

(1) the municipality gives the owner reasonable notice and opportunity to comply with the ordinance; and

(2) the owner of the property fails to comply with the ordinance.

(b) The municipality may assess the costs incurred by the municipality under Subsection (a) against the property. The municipality has a lien on the property for the costs incurred and for interest accruing at the annual rate of 10 percent on the amount due until the municipality is paid.

(c) The municipality may perfect the lien by filing written notice of the lien with the county clerk of the county in which the property is located. The notice of lien must be in recordable form and must state the name of each property owner, if known, the legal description of the property, and the amount due.

(d) The municipality's lien is inferior to any previously recorded bona fide mortgage lien attached to the real property to which the municipality's lien attaches, if the mortgage lien was filed for record before the date the municipality files the notice of lien with the county clerk. The municipality's lien is superior to all other previously recorded judgment liens.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1396 (H.B. 1554), Sec. 2, eff. September 1, 2013.

SUBCHAPTER C. QUASI-JUDICIAL ENFORCEMENT OF HEALTH AND SAFETY ORDINANCES

Sec. 54.031. SUBCHAPTER APPLICABLE TO CERTAIN MUNICIPALITIES. This subchapter applies to a municipality that by ordinance implements the subchapter.

Added by Acts 1989, 71st Leg., ch. 1113, Sec. 1, eff. Aug. 28, 1989. Amended by Acts 1991, 72nd Leg., ch. 753, Sec. 5, eff. June 16, 1991.

Sec. 54.032. ORDINANCES SUBJECT TO QUASI-JUDICIAL ENFORCEMENT. This subchapter applies only to ordinances:

(1) for the preservation of public safety, relating to the materials or methods used to construct a building or improvement, including the foundation, structural elements, electrical wiring or apparatus, plumbing and fixtures, entrances, or exits;

(2) relating to the fire safety of a building or improvement, including provisions relating to materials, types of construction or design, warning devices, sprinklers or other fire suppression devices, availability of water supply for extinguishing fires, or location, design, or width of entrances or exits;

(3) relating to dangerously damaged or deteriorated buildings or improvements;

(4) relating to conditions caused by accumulations of refuse, vegetation, or other matter that creates breeding and living places for insects and rodents;

(5) relating to a building code or to the condition, use, or appearance of property in a municipality;

(6) relating to animal care and control; or

(7) relating to water conservation measures, including watering restrictions.

Added by Acts 1989, 71st Leg., ch. 1113, Sec. 1, eff. Aug. 28, 1989. Amended by Acts 1997, 75th Leg., ch. 582, Sec. 1, eff. June 2, 1997.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 135 (S.B. 654), Sec. 2, eff. September 1, 2013.

Sec. 54.033. BUILDING AND STANDARDS COMMISSION. (a) The governing body of the municipality may provide for the appointment of a building and standards commission to hear and determine cases concerning alleged violations of ordinances.

(b) A commission appointed for the purpose of hearing cases under this subchapter shall consist of one or more panels, each composed of at least five members, to be appointed for terms of two years.

(c) The appointing authority may remove a commission member for cause on a written charge. Before a decision regarding removal is made, the appointing authority must hold a public hearing on the matter if requested by the commission member subject to the removal action.

(d) A vacancy shall be filled for the unexpired term.

(e) The governing body, by charter or ordinance, may provide for the appointment of eight or more alternate members of the commission who shall serve in the absence of one or more regular members when requested to do so by the mayor or city manager. The alternate members serve for the same period and are subject to removal in the same manner as the regular members. A vacancy is filled in the same manner as a vacancy among the regular members.

Added by Acts 1989, 71st Leg., ch. 1113, Sec. 1, eff. Aug. 28, 1989. Amended by Acts 1993, 73rd Leg., ch. 836, Sec. 1, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 413, Sec. 3, eff. Sept. 1, 2001.

Sec. 54.034. PROCEEDINGS OF COMMISSION PANELS. (a) All cases to be heard by the commission may be heard by any panel of the commission. A majority of the members of a panel must hear a case.

(b) A majority of the entire commission shall adopt rules for the entire commission in accordance with any ordinances adopted pursuant to this subchapter. The rules shall establish procedures for use in hearings, providing ample opportunity for

presentation of evidence and testimony by respondents or persons opposing charges brought by the municipality or its building officials relating to alleged violations of ordinances.

(c) The governing body of the municipality by ordinance shall designate the appropriate official of the municipality who shall present all cases before the commission panels.

(d) Meetings of the commission panels shall be held at the call of the chairman of each panel and at other times as determined by the commission. All meetings of the commission and its panels shall be open to the public. Each chairman of a panel, or in the chairman's absence each acting chairman, may administer oaths and compel the attendance of witnesses.

(e) Each commission panel shall keep minutes of its proceedings showing the vote of each member on each question or the fact that a member is absent or fails to vote. Each commission panel shall keep records of its examinations and other official actions. The minutes and records shall be filed immediately in the office of the commission as public records.

Added by Acts 1989, 71st Leg., ch. 1113, Sec. 1, eff. Aug. 28, 1989. Amended by Acts 1993, 73rd Leg., ch. 836, Sec. 2, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 413, Sec. 5, eff. Sept. 1, 2001.

Sec. 54.035. NOTICE. (a) Except as provided by Subsections (a-1) and (a-2), notice of all proceedings before the commission panels must be given:

(1) by personal delivery, by certified mail with return receipt requested, or by delivery by the United States Postal Service using signature confirmation service, to the record owners of the affected property, and each holder of a recorded lien against the affected property, as shown by the records in the office of the county clerk of the county in which the affected property is located if the address of the lienholder can be ascertained from the deed of trust establishing the lien or other applicable instruments on file in the office of the county clerk; and

(2) to all unknown owners, by posting a copy of the notice on the front door of each improvement situated on the affected property or as close to the front door as practicable.

(a-1) Notice to a condominium association of a proceeding before a commission panel relating to a condominium, as defined by Section 81.002 or 82.003, Property Code, located wholly or partly in a municipality with a population of more than 1.9 million must be served by personal service, by certified mail, return receipt requested, or by the United States Postal Service using signature confirmation service, to the registered agent of the unit owners' association.

(a-2) Notice to an owner of a unit of a condominium, as defined by Section 81.002 or 82.003, Property Code, located wholly or partly in a municipality with a population of more than 1.9 million must be given in accordance with Section 82.118, Property Code.

(b) The notice must be posted and either personally delivered or mailed on or before the 10th day before the date of the hearing before the commission panel and must state the date, time, and place of the hearing. In addition, the notice must be published in a newspaper of general circulation in the municipality on one occasion on or before the 10th day before the date fixed for the hearing.

(c) The commission may file notice of a proceeding before a commission panel in the Official Public Records of Real Property in the county in which the affected property is located. The notice must contain the name and address of the owner of the affected property if that information can be determined from a reasonable search of the instruments on file in the office of the county clerk, a legal description of the affected property, and a description of the proceeding. The filing of the notice is binding on subsequent grantees, lienholders, or other transferees of an interest in the property who acquire such interest after the filing of the notice and constitutes notice of the proceeding on any subsequent recipient of any interest in the property who acquires such interest after the filing of the notice.

(d) A municipality must exercise due diligence to determine the identity and address of a property owner, lienholder, or registered agent to whom the municipality is required to give notice.

(e) A municipality exercises due diligence in determining the identity and address of a property owner, lienholder, or registered agent when it follows the procedures for service under Section 82.118, Property Code, or searches the following records:

(1) county real property records of the county in which the property is located;

(2) appraisal district records of the appraisal district in which the property is located;

(3) records of the secretary of state, if the property owner, lienholder, or registered agent is a corporation, partnership, or other business association;

(4) assumed name records of the county in which the property is located;

(5) tax records of the municipality; and

(6) utility records of the municipality.

(f) When a municipality mails a notice in accordance with this section to a property owner, lienholder, or registered agent and the United States Postal Service returns the notice as "refused" or "unclaimed," the validity of the notice is not affected, and the notice is considered delivered.

Added by Acts 1989, 71st Leg., ch. 1113, Sec. 1, eff. Aug. 28, 1989. Amended by Acts 1993, 73rd Leg., ch. 836, Sec. 3, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 413, Sec. 6, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 370 (S.B. 352), Sec. 1, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1323 (H.B. 3128), Sec. 4, eff. September 1, 2009.

Sec. 54.036. FUNCTIONS. A commission panel may:

(1) order the repair, within a fixed period, of buildings found to be in violation of an ordinance;

(2) declare a building substandard in accordance with the powers granted by this subchapter;

(3) order, in an appropriate case, the immediate removal of persons or property found on private property, enter on private property to secure the removal if it is determined that conditions exist on the property that constitute a violation of an ordinance, and order action to be taken as necessary to remedy, alleviate, or remove any substandard building found to exist;

(4) issue orders or directives to any peace officer of the state, including a sheriff or constable or the chief of police of the municipality, to enforce and carry out the lawful orders or directives of the commission panel;

(5) determine the amount and duration of the civil penalty the municipality may recover as provided by Section 54.017.

Added by Acts 1989, 71st Leg., ch. 1113, Sec. 1, eff. Aug. 28, 1989. Amended by Acts 1993, 73rd Leg., ch. 836, Sec. 4, eff. Sept. 1, 1993.

Sec. 54.037. CIVIL PENALTY. (a) A determination made under Section 54.036(5) is final and binding and constitutes prima facie evidence of the penalty in any court of competent jurisdiction in a civil suit brought by the municipality for final judgment in accordance with the established penalty.

(b) To enforce any civil penalty under this subchapter, the municipal secretary or clerk must file with the district clerk of the county in which the municipality is located, a certified copy of the order of the commission panel establishing the amount and duration of the penalty. No other proof is required for a district court to enter final judgment on the penalty.

Added by Acts 1989, 71st Leg., ch. 1113, Sec. 1, eff. Aug. 28, 1989. Amended by Acts 1993, 73rd Leg., ch. 836, Sec. 5, eff. Sept. 1, 1993.

Sec. 54.038. VOTE. A majority vote of the members voting on a matter is necessary to take any action under this subchapter and any ordinance adopted by the municipality in accordance with this subchapter.

Added by Acts 1989, 71st Leg., ch. 1113, Sec. 1, eff. Aug. 28, 1989. Amended by Acts 1993, 73rd Leg., ch. 836, Sec. 6, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 413, Sec. 7, eff. Sept. 1, 2001.

Sec. 54.039. JUDICIAL REVIEW. (a) Any owner, lienholder, or mortgagee of record jointly or severally aggrieved by any decision of a commission panel may present a petition to a district court, duly verified, setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality. The petition must be presented to the court within 30 calendar days after the date a copy of the final decision of the commission panel is personally delivered, mailed by first class mail with certified return receipt requested, or delivered by the United States Postal Service using signature confirmation service, to all persons to whom notice is required to be sent under Section 54.035. The commission panel shall deliver or mail that copy promptly after the decision becomes final. In addition, an abbreviated copy of the order shall be published one time in a newspaper of general circulation in the municipality within 10 calendar days after the date of the delivery or mailing of the copy as provided by this subsection, including the street address or legal description of the property; the date of the hearing, a brief statement indicating the results of the order, and instructions stating where a complete copy of the order may be obtained, and, except in a municipality with a population of 1.9 million or more, a copy shall be filed in the office of the municipal secretary or clerk.

(b) On presentation of the petition, the court may allow a writ of certiorari directed to the commission panel to review the decision of the commission panel and shall prescribe in the writ the time, which may not be less than 10 days, within which a return on the writ must be made and served on the relator or the relator's attorney.

(c) The commission panel may not be required to return the original papers acted on by it. It is sufficient for the commission panel to return certified or sworn copies of the papers or of parts of the papers as may be called for by the writ.

(d) The return must concisely set forth other facts as may be pertinent and material to show the grounds for the decision appealed from and shall be verified.

(e) The allowance of the writ does not stay proceedings on the decision appealed from.

(f) The district court's review shall be limited to a hearing under the substantial evidence rule. The court may reverse or affirm, in whole or in part, or may modify the decision brought up for review.

(g) Costs may not be allowed against the commission panel.

(h) If the decision of the commission panel is affirmed or not substantially reversed but only modified, the district court shall allow to the municipality all attorney's fees and other costs and expenses incurred by it and shall enter a judgment for those

items, which may be entered against the property owners as well as all persons found to be in occupation of the property subject to the proceedings before the commission panel.

Added by Acts 1989, 71st Leg., ch. 1113, Sec. 1, eff. Aug. 28, 1989. Amended by Acts 1993, 73rd Leg., ch. 836, Sec. 7, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 413, Sec. 8, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 701, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 370 (S.B. 352), Sec. 2, eff. June 15, 2007.

Sec. 54.040. LIEN; ABSTRACT. (a) An order issued under Section 54.036, including any civil penalties assessed under Section 54.036(5), is enforceable in the same manner as provided in Sections 214.001(k), (m), (n), and (o). An abstract of judgment shall be ordered against all parties found to be the owners of the subject property or in possession of that property.

(b) A lienholder does not have standing to bring a proceeding under Section 54.039 on the ground that the lienholder was not notified of the proceedings before the commission panel or was unaware of the condition of the property, unless the lienholder had first appeared before the commission panel and entered an appearance in opposition to the proceedings.

Added by Acts 1989, 71st Leg., ch. 1113, Sec. 1, eff. Aug. 28, 1989. Amended by Acts 1993, 73rd Leg., ch. 836, Sec. 8, eff. Sept. 1, 1993.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1141 (H.B. 2647), Sec. 1, eff. September 1, 2009.

Sec. 54.041. COMMISSION PANEL DECISION FINAL. If no appeals are taken from the decision of the commission panel within the required period, the decision of the commission panel is, in all things, final and binding.

Added by Acts 1989, 71st Leg., ch. 1113, Sec. 1, eff. Aug. 28, 1989. Amended by Acts 1993, 73rd Leg., ch. 836, Sec. 9, eff. Sept. 1, 1993.

Sec. 54.042. MUNICIPAL COURT PROCEEDING NOT AFFECTED. This subchapter does not affect the ability of a municipality to proceed under the jurisdiction of the municipal court.

Added by Acts 1989, 71st Leg., ch. 1113, Sec. 1, eff. Aug. 28, 1989.

Sec. 54.043. ALTERNATIVE ADJUDICATION PROCESSES. A municipality by ordinance may adopt a civil adjudication process, as an alternative to the enforcement process prescribed by the other provisions of this subchapter, for the enforcement of ordinances described by Section 54.032. The alternative process must contain provisions relating to notice, the conduct of proceedings, permissible orders, penalties, and judicial review that are similar to the provisions of this subchapter.

Added by Acts 1997, 75th Leg., ch. 582, Sec. 2, eff. June 2, 1997.

Sec. 54.044. ALTERNATIVE PROCEDURE FOR ADMINISTRATIVE HEARING. (a) As an alternative to the enforcement processes described by this subchapter, a municipality by ordinance may adopt a procedure for an administrative adjudication hearing under which an administrative penalty may be imposed for the

enforcement of an ordinance described by Section 54.032 or adopted under Section 214.001(a)(1).

(b) A procedure adopted under this section must entitle the person charged with violating an ordinance to a hearing and must provide for:

(1) the period during which a hearing shall be held;

(2) the appointment of a hearing officer with authority to administer oaths and issue orders compelling the attendance of witnesses and the production of documents; and

(3) the amount and disposition of administrative penalties, costs, and fees.

(c) A municipal court may enforce an order of a hearing officer compelling the attendance of a witness or the production of a document.

(d) A citation or summons issued as part of a procedure adopted under this section must:

(1) notify the person charged with violating the ordinance that the person has the right to a hearing; and

(2) provide information as to the time and place of the hearing.

(e) The original or a copy of the summons or citation shall be kept as a record in the ordinary course of business of the municipality and is rebuttable proof of the facts it states.

(f) The person who issued the citation or summons is not required to attend a hearing under this section.

(g) A person charged with violating an ordinance who fails to appear at a hearing authorized under this section is considered to admit liability for the violation charged.

(h) At a hearing under this section, the hearing officer shall issue an order stating:

(1) whether the person charged with violating an ordinance is liable for the violation; and

(2) the amount of a penalty, cost, or fee assessed against the person.

(i) An order issued under this section may be filed with the clerk or secretary of the municipality. The clerk or secretary shall keep the order in a separate index and file.

The order may be recorded using microfilm, microfiche, or data processing techniques.

(j) An order issued under this section against a person charged with an ordinance violation may be enforced by:

(1) filing a civil suit for the collection of a penalty assessed against the person; and

(2) obtaining an injunction that:

(A) prohibits specific conduct that violates the ordinance; or

(B) requires specific conduct necessary for compliance with the ordinance.

(k) A person who is found by a hearing officer to have violated an ordinance may appeal the determination by filing a petition in municipal court before the 31st day after the date the hearing officer's determination is filed. An appeal does not stay enforcement and collection of the judgment unless the person, before filing the appeal, posts a bond with an agency designated for that purpose by the municipality.

Added by Acts 2001, 77th Leg., ch. 413, Sec. 9, eff. Sept. 1, 2001.

EXHIBIT #3

TEXAS LOCAL GOVERNMENT CODE

§ Chapter 211.011

LOCAL GOVERNMENT CODE

TITLE 7. REGULATION OF LAND USE, STRUCTURES, BUSINESSES, AND RELATED ACTIVITIES

SUBTITLE A. MUNICIPAL REGULATORY AUTHORITY

CHAPTER 211. MUNICIPAL ZONING AUTHORITY

SUBCHAPTER A. GENERAL ZONING REGULATIONS

Sec. 211.001. PURPOSE. The powers granted under this subchapter are for the purpose of promoting the public health, safety, morals, or general welfare and protecting and preserving places and areas of historical, cultural, or architectural importance and significance.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 211.002. ADOPTION OF REGULATION OR BOUNDARY INCLUDES AMENDMENT OR OTHER CHANGE. A reference in this subchapter to the adoption of a zoning regulation or a zoning district boundary includes the amendment, repeal, or other change of a regulation or boundary.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 211.003. ZONING REGULATIONS GENERALLY. (a) The governing body of a municipality may regulate:

(1) the height, number of stories, and size of buildings and other structures;

(2) the percentage of a lot that may be occupied;

(3) the size of yards, courts, and other open spaces;

(4) population density;

(5) the location and use of buildings, other structures, and land for business, industrial, residential, or other purposes; and

(6) the pumping, extraction, and use of groundwater by persons other than retail public utilities, as defined by Section 13.002, Water Code, for the purpose of preventing the use or contact with groundwater that presents an actual or potential threat to human health.

(b) In the case of designated places and areas of historical, cultural, or architectural importance and significance, the governing body of a municipality may regulate the construction, reconstruction, alteration, or razing of buildings and other structures.

(c) The governing body of a home-rule municipality may also regulate the bulk of buildings.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2003, 78th Leg., ch. 731, Sec. 2, eff. Sept. 1, 2003.

Sec. 211.0035. ZONING REGULATIONS AND DISTRICT BOUNDARIES APPLICABLE TO PAWNSHOPS. (a) In this section, "pawnshop" has the meaning assigned by Section 371.003, Finance Code.

(b) For the purposes of zoning regulation and determination of zoning district boundaries, the governing body of a municipality shall designate pawnshops that have been licensed to transact business by the Consumer Credit Commissioner under Chapter 371, Finance Code, as a permitted use in one or more zoning classifications.

(c) The governing body of a municipality may not impose a specific use permit requirement or any requirement similar in effect to a specific use permit requirement on a pawnshop that has been licensed to transact business by the Consumer Credit Commissioner under Chapter 371, Finance Code.

Added by Acts 1991, 72nd Leg., ch. 687, Sec. 18, eff. Sept. 1, 1991. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.81, eff. Sept. 1, 1999.

Sec. 211.004. COMPLIANCE WITH COMPREHENSIVE PLAN. (a) Zoning regulations must be adopted in accordance with a comprehensive plan and must be designed to:

(1) lessen congestion in the streets;

(2) secure safety from fire, panic, and other dangers;

(3) promote health and the general welfare;

(4) provide adequate light and air;

(5) prevent the overcrowding of land;

(6) avoid undue concentration of population; or

(7) facilitate the adequate provision of transportation, water, sewers, schools, parks, and other public requirements.

(b) Repealed by Acts 1997, 75th Leg., ch. 459, Sec. 2, eff. Sept. 1, 1997.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 458, Sec. 1, eff. Aug. 28, 1989; Acts 1997, 75th Leg., ch. 459, Sec. 2, eff. Sept. 1, 1997.

Sec. 211.005. DISTRICTS. (a) The governing body of a municipality may divide the municipality into districts of a number, shape, and size the governing body

considers best for carrying out this subchapter. Within each district, the governing body may regulate the erection, construction, reconstruction, alteration, repair, or use of buildings, other structures, or land.

(b) Zoning regulations must be uniform for each class or kind of building in a district, but the regulations may vary from district to district. The regulations shall be adopted with reasonable consideration, among other things, for the character of each district and its peculiar suitability for particular uses, with a view of conserving the value of buildings and encouraging the most appropriate use of land in the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 211.006. PROCEDURES GOVERNING ADOPTION OF ZONING REGULATIONS AND DISTRICT BOUNDARIES. (a) The governing body of a municipality wishing to exercise the authority relating to zoning regulations and zoning district boundaries shall establish procedures for adopting and enforcing the regulations and boundaries. A regulation or boundary is not effective until after a public hearing on the matter at which parties in interest and citizens have an opportunity to be heard. Before the 15th day before the date of the hearing, notice of the time and place of the hearing must be published in an official newspaper or a newspaper of general circulation in the municipality.

(b) In addition to the notice required by Subsection (a), a general-law municipality that does not have a zoning commission shall give notice of a proposed change in a zoning classification to each property owner who would be entitled to notice under Section 211.007(c) if the municipality had a zoning commission. That notice must be given in the same manner as required for notice to property owners under Section 211.007(c). The governing body may not adopt the proposed change until after the 30th day after the date the notice required by this subsection is given.

(c) If the governing body of a home-rule municipality conducts a hearing under Subsection (a), the governing body may, by a two-thirds vote, prescribe the type of notice to be given of the time and place of the public hearing. Notice requirements prescribed under this subsection are in addition to the publication of notice required by Subsection (a).

(d) If a proposed change to a regulation or boundary is protested in accordance with this subsection, the proposed change must receive, in order to take effect, the affirmative vote of at least three-fourths of all members of the governing body. The protest must be written and signed by the owners of at least 20 percent of either:

(1) the area of the lots or land covered by the proposed change; or

(2) the area of the lots or land immediately adjoining the area covered by the proposed change and extending 200 feet from that area.

(e) In computing the percentage of land area under Subsection (d), the area of streets and alleys shall be included.

(f) The governing body by ordinance may provide that the affirmative vote of at least three-fourths of all its members is required to overrule a recommendation of the municipality's zoning commission that a proposed change to a regulation or boundary be denied.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 211.007. ZONING COMMISSION. (a) To exercise the powers authorized by this subchapter, the governing body of a home-rule municipality shall, and the governing body of a general-law municipality may, appoint a zoning commission. The commission shall recommend boundaries for the original zoning districts and appropriate zoning regulations for each district. If the municipality has a municipal planning commission at the time of implementation of this subchapter, the governing body may appoint that commission to serve as the zoning commission.

(b) The zoning commission shall make a preliminary report and hold public hearings on that report before submitting a final report to the governing body. The governing body may not hold a public hearing until it receives the final report of the zoning commission unless the governing body by ordinance provides that a public hearing is to be held, after the notice required by Section 211.006(a), jointly with a public hearing required to be held by the zoning commission. In either case, the governing body may not take action on the matter until it receives the final report of the zoning commission.

(c) Before the 10th day before the hearing date, written notice of each public hearing before the zoning commission on a proposed change in a zoning classification shall be sent to each owner, as indicated by the most recently approved municipal tax roll, of real property within 200 feet of the property on which the change in classification is proposed. The notice may be served by its deposit in the municipality, properly addressed with postage paid, in the United States mail. If the property within 200 feet of the property on which the change is proposed is located in territory annexed to the municipality and is not included on the most recently approved municipal tax roll, the notice shall be given in the manner provided by Section 211.006(a).

(c-1) Before the 10th day before the hearing date, written notice of each public hearing before the zoning commission on a proposed change in a zoning classification affecting residential or multifamily zoning shall be sent to each school district in which the property for which the change in classification is proposed is located. The notice may be served by its deposit in the municipality, properly addressed with postage paid, in the United States mail.

(c-2) Subsection (c-1) does not apply to a municipality the majority of which is located in a county with a population of 100,000 or less, except that such a municipality must give notice under Subsection (c-1) to a school district that has territory in the municipality and requests the notice. For purposes of this subsection, if a school district makes a request for notice under Subsection (c-1), the municipality must give notice of each public hearing held following the request unless the school district requests that no further notices under Subsection (c-1) be given to the school district.

(d) The governing body of a home-rule municipality may, by a two-thirds vote, prescribe the type of notice to be given of the time and place of a public hearing held jointly by the governing body and the zoning commission. If notice requirements are prescribed under this subsection, the notice requirements prescribed by Subsections (b) and (c) and by Section 211.006(a) do not apply.

(e) If a general-law municipality exercises zoning authority without the appointment of a zoning commission, any reference in a law to a municipal zoning commission or planning commission means the governing body of the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 640 (H.B. 674), Sec. 1, eff. September 1, 2013.

Sec. 211.0075. COMPLIANCE WITH OPEN MEETINGS LAW. A board or commission established by an ordinance or resolution adopted by the governing body of a municipality to assist the governing body in developing an initial comprehensive zoning plan or initial zoning regulations for the municipality, or a committee of the board or commission that includes one or more members of the board or commission, is subject to Chapter 551, Government Code, regardless of whether the board, commission, or committee has rulemaking or quasi-judicial powers or functions only in an advisory capacity.

Added by Acts 1993, 73rd Leg., ch. 381, Sec. 1, eff. Aug. 30, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(82), eff. Sept. 1, 1995.

Sec. 211.008. BOARD OF ADJUSTMENT. (a) The governing body of a municipality may provide for the appointment of a board of adjustment. In the regulations adopted under this subchapter, the governing body may authorize the board of adjustment, in appropriate cases and subject to appropriate conditions and safeguards, to make special exceptions to the terms of the zoning ordinance that are consistent with the general purpose and intent of the ordinance and in accordance with any applicable rules contained in the ordinance.

(b) A board of adjustment must consist of at least five members to be appointed for terms of two years. The governing body must provide the procedure for appointment. The governing body may authorize each member of the governing body, including the mayor, to appoint one member to the board. The appointing authority may remove a board member for cause, as found by the appointing authority, on a written charge after a public hearing. A vacancy on the board shall be filled for the unexpired term.

(c) The governing body, by charter or ordinance, may provide for the appointment of alternate board members to serve in the absence of one or more regular members when requested to do so by the mayor or city manager. An alternate member serves for the same period as a regular member and is subject to removal in the same

manner as a regular member. A vacancy among the alternate members is filled in the same manner as a vacancy among the regular members.

(d) Each case before the board of adjustment must be heard by at least 75 percent of the members.

(e) The board by majority vote shall adopt rules in accordance with any ordinance adopted under this subchapter and with the approval of the governing body. Meetings of the board are held at the call of the presiding officer and at other times as determined by the board. The presiding officer or acting presiding officer may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public.

(f) The board shall keep minutes of its proceedings that indicate the vote of each member on each question or the fact that a member is absent or fails to vote. The board shall keep records of its examinations and other official actions. The minutes and records shall be filed immediately in the board's office and are public records.

(g) The governing body of a Type A general-law municipality by ordinance may grant the members of the governing body the authority to act as a board of adjustment under this chapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 126, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 724, Sec. 1, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 363, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 820 (H.B. 2497), Sec. 1, eff. September 1, 2019.

Sec. 211.009. AUTHORITY OF BOARD. (a) The board of adjustment may:

(1) hear and decide an appeal that alleges error in an order, requirement, decision, or determination made by an administrative official in the enforcement of this subchapter or an ordinance adopted under this subchapter;

(2) hear and decide special exceptions to the terms of a zoning ordinance when the ordinance requires the board to do so;

(3) authorize in specific cases a variance from the terms of a zoning ordinance if the variance is not contrary to the public interest and, due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship, and so that the spirit of the ordinance is observed and substantial justice is done; and

(4) hear and decide other matters authorized by an ordinance adopted under this subchapter.

(b) In exercising its authority under Subsection (a)(1), the board may reverse or affirm, in whole or in part, or modify the administrative official's order, requirement, decision, or determination from which an appeal is taken and make the correct order, requirement, decision, or determination, and for that purpose the board has the same authority as the administrative official.

(c) The concurring vote of 75 percent of the members of the board is necessary to:

(1) reverse an order, requirement, decision, or determination of an administrative official;

(2) decide in favor of an applicant on a matter on which the board is required to pass under a zoning ordinance; or

(3) authorize a variation from the terms of a zoning ordinance.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 126, Sec. 2, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 724, Sec. 2, eff. Aug. 28, 1995.

Sec. 211.010. APPEAL TO BOARD. (a) Except as provided by Subsection (e), any of the following persons may appeal to the board of adjustment a decision made by an administrative official that is not related to a specific application, address, or project:

(1) a person aggrieved by the decision; or

(2) any officer, department, board, or bureau of the municipality affected by the decision.

(a-1) Except as provided by Subsection (e), any of the following persons may appeal to the board of adjustment a decision made by an administrative official that is related to a specific application, address, or project:

(1) a person who:

(A) filed the application that is the subject of the decision;

(B) is the owner or representative of the owner of the property that is the subject of the decision; or

(C) is aggrieved by the decision and is the owner of real property within 200 feet of the property that is the subject of the decision; or

(2) any officer, department, board, or bureau of the municipality affected by the decision.

(b) The appellant must file with the board and the official from whom the appeal is taken a notice of appeal specifying the grounds for the appeal. The appeal must be filed not later than the 20th day after the date the decision is made. On receiving the notice, the official from whom the appeal is taken shall immediately transmit to the board all the papers constituting the record of the action that is appealed.

(c) An appeal stays all proceedings in furtherance of the action that is appealed unless the official from whom the appeal is taken certifies in writing to the board facts supporting the official's opinion that a stay would cause imminent peril to life or property. In that case, the proceedings may be stayed only by a restraining order granted by the board or a court of record on application, after notice to the official, if due cause is shown.

(d) The board shall set a reasonable time for the appeal hearing and shall give public notice of the hearing and due notice to the parties in interest. A party may appear at the appeal hearing in person or by agent or attorney. The board shall decide the appeal at the next meeting for which notice can be provided following the hearing and not later than the 60th day after the date the appeal is filed.

(e) A member of the governing body of the municipality who serves on the board of adjustment under Section 211.008(g) may not bring an appeal under this section.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 363, Sec. 2, eff. Sept. 1, 1997.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 820 (H.B. 2497), Sec. 2, eff. September 1, 2019.

Sec. 211.011. JUDICIAL REVIEW OF BOARD DECISION. (a) Any of the following persons may present to a district court, county court, or county court at law a verified petition stating that the decision of the board of adjustment is illegal in whole or in part and specifying the grounds of the illegality:

(1) a person aggrieved by a decision of the board;

(2) a taxpayer; or

(3) an officer, department, board, or bureau of the municipality.

(b) The petition must be presented within 10 days after the date the decision is filed in the board's office.

(c) On the presentation of the petition, the court may grant a writ of certiorari directed to the board to review the board's decision. The writ must indicate the time by which the board's return must be made and served on the petitioner's attorney, which must be after 10 days and may be extended by the court. Granting of the writ does not stay the proceedings on the decision under appeal, but on application and after notice to the board the court may grant a restraining order if due cause is shown.

(d) The board's return must be verified and must concisely state any pertinent and material facts that show the grounds of the decision under appeal. The board is not required to return the original documents on which the board acted but may return certified or sworn copies of the documents or parts of the documents as required by the writ.

(e) If at the hearing the court determines that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take evidence as directed. The referee shall report the evidence to the court with the referee's findings of fact and conclusions of law. The referee's report constitutes a part of the proceedings on which the court shall make its decision.

(f) The court may reverse or affirm, in whole or in part, or modify the decision that is appealed. Costs may not be assessed against the board unless the court determines

that the board acted with gross negligence, in bad faith, or with malice in making its decision.

(g) The court may not apply a different standard of review to a decision of a board of adjustment that is composed of members of the governing body of the municipality under Section 211.008(g) than is applied to a decision of a board of adjustment that does not contain members of the governing body of a municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 363, Sec. 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 646, Sec. 1, eff. Aug. 30, 1999.

Sec. 211.012. ENFORCEMENT; PENALTY; REMEDIES. (a) The governing body of a municipality may adopt ordinances to enforce this subchapter or any ordinance or regulation adopted under this subchapter.

(b) A person commits an offense if the person violates this subchapter or an ordinance or regulation adopted under this subchapter. An offense under this subsection is a misdemeanor, punishable by fine, imprisonment, or both, as provided by the governing body. The governing body may also provide civil penalties for a violation.

(c) If a building or other structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or if a building, other structure, or land is used in violation of this subchapter or an ordinance or regulation adopted under this subchapter, the appropriate municipal authority, in addition to other remedies, may institute appropriate action to:

(1) prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use;

(2) restrain, correct, or abate the violation;

(3) prevent the occupancy of the building, structure, or land; or

(4) prevent any illegal act, conduct, business, or use on or about the premises.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 211.013. CONFLICT WITH OTHER LAWS; EXCEPTIONS. (a) If a zoning regulation adopted under this subchapter requires a greater width or size of a yard, court, or other open space, requires a lower building height or fewer number of stories for a building, requires a greater percentage of lot to be left unoccupied, or otherwise imposes higher standards than those required under another statute or local ordinance or regulation, the regulation adopted under this subchapter controls. If the other statute or local ordinance or regulation imposes higher standards, that statute, ordinance, or regulation controls.

(b) This subchapter does not authorize the governing body of a municipality to require the removal or destruction of property that exists at the time the governing body implements this subchapter and that is actually and necessarily used in a public service business.

(c) This subchapter does not apply to a building, other structure, or land under the control, administration, or jurisdiction of a state or federal agency.

(d) This subchapter applies to a privately owned building or other structure and privately owned land when leased to a state agency.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 476, Sec. 1, eff. June 18, 1999.

Sec. 211.014. PANEL OF BOARD OF ADJUSTMENT. (a) This section applies only to a municipality with a population of 500,000 or more.

(b) A board of adjustment shall consist of one or more panels of at least five members each to be appointed for terms of two years. If more than one panel of the board is appointed, the board consists of the regular members of all of the panels. The board may adopt rules for the assignment of appeals to a panel.

(c) If the board consists of more than one panel, only one panel may hear, handle, or render a decision in a particular case. A decision of a panel of the board on a case constitutes the decision of the board.

(d) Meetings of a panel of the board are held at the call of the presiding officer of the panel and at other times as determined by the panel or the board.

(e) A panel of a board of adjustment:

(1) has the powers and duties that a board of adjustment has under Sections 211.008, 211.009, 211.010, and 211.011; and

(2) is to be treated as a board of adjustment for purposes of the requirement imposed by Section 211.008(d).

Added by Acts 1993, 73rd Leg., ch. 126, Sec. 3, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 402, Sec. 12, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 669, Sec. 73, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 24 (S.B. 177), Sec. 1, eff. May 9, 2005.

Sec. 211.015. ZONING REFERENDUM IN HOME-RULE MUNICIPALITY. (a) Notwithstanding other requirements of this subchapter, the voters of a home-rule municipality may repeal the municipality's zoning regulations adopted under this subchapter by either:

(1) a charter election conducted under law; or

(2) on the initial adoption of zoning regulations by a municipality, the use of any referendum process that is authorized under the charter of the municipality for public protest of the adoption of an ordinance.

(b) Notwithstanding any procedural or other requirements of this chapter to the contrary, the governing body of a home-rule municipality may on its own motion submit the repeal of the municipality's zoning regulations, as adopted under this chapter, in their entirety to the electors by use of any process that is authorized under

the charter of the municipality for a popular vote on the rejection or repeal of ordinances in general.

(c) The provisions of this chapter shall not be construed to prohibit the adoption or application of any charter provision of a home-rule municipality that requires a waiting period prior to the adoption of zoning regulations or the submission of the initial adoption of zoning regulations to a binding referendum election, or both, provided that all procedural requirements of this chapter for the adoption of the zoning regulation are otherwise complied with. This subsection does not apply to the adoption of airport zoning regulations under Chapter 241.

(d) Notwithstanding any charter provision to the contrary, a governing body of a municipality may adopt a zoning ordinance and condition its taking effect upon the ordinance receiving the approval of the electors at an election held for that purpose.

(e) The provisions of this section may only be utilized for the repeal of a municipality's zoning regulations in their entirety or for determinations of whether a municipality should initially adopt zoning regulations, except the governing body of a municipality may amend, modify, or repeal a zoning ordinance adopted, approved, or ratified at an election conducted pursuant to this section.

(f) The provisions of this section shall not authorize the repeal of:

(1) an ordinance approving land-use regulations adopted under the provisions of this chapter by a board of directors of a reinvestment zone under the authority of Section 311.010(c), Tax Code; or

(2) an ordinance approving airport zoning regulations adopted under Chapter 241.

Added by Acts 1993, 73rd Leg., ch. 126, Sec. 4, eff. Sept. 1, 1993.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 190 (S.B. 1360), Sec. 1, eff. May 23, 2007.

Sec. 211.016. ZONING REGULATION AFFECTING APPEARANCE OF BUILDINGS OR OPEN SPACE. (a) This section applies only to a zoning regulation that affects:

(1) the exterior appearance of a single-family house, including the type and amount of building materials; or

(2) the landscaping of a single-family residential lot, including the type and amount of plants or landscaping materials.

(b) A zoning regulation adopted after the approval of a residential subdivision plat does not apply to that subdivision until the second anniversary of the later of:

(1) the date the plat was approved; or

(2) the date the municipality accepts the subdivision improvements offered for public dedication.

(c) This section does not prevent a municipality from adopting or enforcing applicable building codes or prohibiting the use of building materials that have been proven to be inherently dangerous.

Added by Acts 2003, 78th Leg., ch. 524, Sec. 1, eff. Sept. 1, 2003.

Sec. 211.0165. DESIGNATION OF HISTORIC LANDMARK. (a) Except as provided by Subsection (b), a municipality that has established a process for designating places or areas of historical, cultural, or architectural importance and significance through the adoption of zoning regulations or zoning district boundaries may not designate a property as a local historic landmark unless:

(1) the owner of the property consents to the designation; or

(2) the designation is approved by a three-fourths vote of:

(A) the governing body of the municipality; and

(B) the zoning, planning, or historical commission of the municipality, if any.

(b) If the property is owned by an organization that qualifies as a religious organization under Section 11.20, Tax Code, the municipality may designate the property as a local historic landmark only if the organization consents to the designation.

(c) The municipality must provide the property owner a statement that describes the impact that a historic designation of the owner's property may have on the owner and the owner's property. The municipality must provide the statement to the owner not later than the 15th day before the date of the initial hearing on the historic designation of the property of:

(1) the zoning, planning, or historical commission, if any; or

(2) the governing body of the municipality.

(d) The historic designation impact statement must include lists of the:

(1) regulations that may be applied to any structure on the property after the designation;

(2) procedures for the designation;

(3) tax benefits that may be applied to the property after the designation; and

(4) rehabilitation or repair programs that the municipality offers for a property designated as historic.

(e) The municipality must allow an owner to withdraw consent at any time during the designation process.

Added by Acts 2019, 86th Leg., R.S., Ch. 231 (H.B. 2496), Sec. 1, eff. May 25, 2019.

Sec. 211.017. CONTINUATION OF LAND USE IN NEWLY INCORPORATED AREAS. (a) A municipality incorporated after September 1, 2003, may not prohibit a person from:

(1) continuing to use land in the area in the manner in which the land was being used on the date of incorporation if the land use was legal at that time; or

(2) beginning to use land in the area in the manner that was planned for the land before the 90th day before the effective date of the incorporation if:

(A) one or more licenses, certificates, permits, approvals, or other forms of authorization by a governmental entity were required by law for the planned land use; and

(B) a completed application for the initial authorization was filed with the governmental entity before the date of incorporation.

(b) For purposes of this section, a completed application is filed if the application includes all documents and other information designated as required by the governmental entity in a written notice to the applicant.

(c) This section does not prohibit a municipality from imposing:

(1) a regulation relating to the location of sexually oriented businesses, as that term is defined by Section 243.002;

(2) a municipal ordinance, regulation, or other requirement affecting colonias, as that term is defined by Section 2306.581, Government Code;

(3) a regulation relating to preventing imminent destruction of property or injury to persons;

(4) a regulation relating to public nuisances;

(5) a regulation relating to flood control;

(6) a regulation relating to the storage and use of hazardous substances;

(7) a regulation relating to the sale and use of fireworks; or

(8) a regulation relating to the discharge of firearms.

(d) A municipal ordinance or rule in conflict with this section is void.

Added by Acts 2003, 78th Leg., ch. 279, Sec. 1, eff. Sept. 1, 2003.

Renumbered from Local Government Code, Section 211.016 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(66), eff. September 1, 2005.

Sec. 211.018. CONTINUATION OF LAND USE REGARDING MANUFACTURED HOME COMMUNITIES. (a) In this section, "manufactured

home," "manufactured home community," and "manufactured home lot" have the meanings assigned by Section 94.001, Property Code.

(b) The governing body of a municipality may not require a change in the nonconforming use of any manufactured home lot within the boundaries of a manufactured home community if:

(1) the nonconforming use of the land constituting the manufactured home community is authorized by law; and

(2) at least 50 percent of the manufactured home lots in the manufactured home community are physically occupied by a manufactured home used as a residence.

(c) For purposes of Subsection (b), requiring a change in the nonconforming use includes:

(1) requiring the number of manufactured home lots designated as a nonconforming use to be decreased; and

(2) declaring that the nonconforming use of the manufactured home lots has been abandoned based on a period of continuous abandonment of use as a manufactured home lot of any lot for less than 12 months.

(d) A manufactured home owner may install a new or used manufactured home, regardless of the size, or any appurtenance on a manufactured home lot located in a manufactured home community for which a nonconforming use is authorized by law, provided that the manufactured home or appurtenance and the installation of the manufactured home or appurtenance comply with:

(1) nonconforming land use standards, including standards relating to separation and setback distances and lot size, applicable on the date the nonconforming use of the land constituting the manufactured home community was authorized by law; and

(2) all applicable state and federal law and standards in effect on the date of the installation of the manufactured home or appurtenance.

(e) A municipality that prohibits the construction of new single-family residences or the construction of additions to existing single-family residences on a site located in a designated floodplain may, notwithstanding Subsection (b), (c), or (d), prohibit the installation of a manufactured home in a manufactured home community on a manufactured home lot that is located in an equivalently designated floodplain.

Added by Acts 2017, 85th Leg., R.S., Ch. 741 (S.B. 1248), Sec. 1, eff. September 1, 2017.

SUBCHAPTER B. ADDITIONAL ZONING REGULATIONS IN MUNICIPALITY WITH POPULATION OF MORE THAN 290,000

Sec. 211.021. ADDITIONAL ZONING REGULATIONS. (a) The governing body of a municipality with a population of more than 290,000 that has adopted a comprehensive zoning ordinance under Subchapter A may, by ordinance, divide the municipality into neighborhood zoning areas after a public hearing on the matter at which parties in interest and citizens have an opportunity to be heard. Before the 15th day before the date of the hearing, notice of the time and place of the hearing must be published in an official newspaper or a newspaper of general circulation in the municipality.

(b) The mayor of the municipality, with the approval of the governing body, may appoint a neighborhood advisory zoning council for each of the neighborhood zoning areas. Each zoning council must be composed of five citizens who reside in the neighborhood zoning area. A zoning council member is appointed for a term of two years.

(c) Each neighborhood advisory zoning council shall provide the zoning commission with information, advice, and recommendations relating to each application filed with the zoning commission for zoning regulation changes that affect property within that neighborhood zoning area.

(d) On the filing of a zoning change application with the zoning commission, the zoning commission shall provide the appropriate neighborhood advisory zoning council with a copy of the application. The zoning council shall conduct a public hearing on the application and must publish notice of the time and place of the hearing in an official newspaper or a newspaper of general circulation in the municipality before the 10th day before the date of the hearing.

(e) At or before the zoning commission's hearing on the zoning change application, the neighborhood advisory zoning council shall submit to the zoning commission any information, advice, and recommendations relating to that application that the zoning council considers proper. The zoning commission may not overrule a

recommendation of the zoning council with respect to the disposition of the application unless at least three-fourths of the members of the zoning commission who are present at the meeting vote to overrule the recommendation.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER C. REGULATION OF COTTAGE FOOD PRODUCTION OPERATIONS

Sec. 211.031. DEFINITIONS. In this subchapter, "cottage food production operation" and "home" have the meanings assigned by Section 437.001, Health and Safety Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 653 (H.B. 970), Sec. 7, eff. September 1, 2013.

Sec. 211.032. CERTAIN ZONING REGULATIONS PROHIBITED. A municipal zoning ordinance may not prohibit the use of a home for cottage food production operations.

Added by Acts 2013, 83rd Leg., R.S., Ch. 653 (H.B. 970), Sec. 7, eff. September 1, 2013.

Sec. 211.033. ACTION FOR NUISANCE OR OTHER TORT. This subchapter does not affect the right of a person to bring a cause of action under other law against

an individual for nuisance or another tort arising out of the individual's use of the individual's home for cottage food production operations.

Added by Acts 2013, 83rd Leg., R.S., Ch. 653 (H.B. 970), Sec. 7, eff. September 1, 2013.

EXHIBIT #4

SAN ANTONIO MUNICIPAL CODE

1, §1-5

Sec. 1-5. - General penalty; continuing violations.

Except for chapters 5, 11, 12, 13, 15, 17, 19, article IV of chapter 26 and articles III and IV of chapter 34 and the Unified Development Code [chapter 35], wherever in this Code or in any ordinance of the city an act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or wherever in such Code or ordinance the doing of any act is required or the failure to do any act is declared to be unlawful, where no specific penalty is provided therefor, the violation of any such provision of this Code or any such ordinance shall be punished by a fine not exceeding five hundred dollars ($500.00); however, violations of traffic laws codified in chapter 19 of the City Code of San Antonio, Texas, shall be punished by a fine not exceeding five hundred dollars ($500.00). Unless otherwise specified therein, violations established by ordinance and made part of the City Code under chapters 5, 11, 12, 13, 15, 17, article IV of chapter 26 and articles III and IV of chapter 34 shall be punished by a fine not to exceed two thousand dollars ($2,000.00). Each day's violation of any ordinance or any provision of this City Code shall constitute a separate offense.

(Code 1959, § 1-5; Ord. No. 57452, § 2, 8-18-83; Ord. No. 66109, § 1, 11-19-87; Ord. No. 69740, §§ 1, 2, 6-29-89; Ord. No. 2009-09-17-0731I, § 2, 9-17-09; Ord. No. 2016-06-30-0518 , § 2, 6-30-16)

EXHIBIT #5

TEXAS LOCAL GOVERNMENT CODE

§214.0015(J)

Sec. 214.0015. ADDITIONAL AUTHORITY REGARDING SUBSTANDARD BUILDING. (a) This section applies only to a municipality that has adopted an ordinance under Section 214.001.

(b) In addition to the authority granted to the municipality by Section 214.001, after the expiration of the time allotted under Section 214.001(d) or (e) for the repair, removal, or demolition of a building, the municipality may:

(1) repair the building at the expense of the municipality and assess the expenses on the land on which the building stands or to which it is attached and may provide for that assessment, the mode and manner of giving notice, and the means of recovering the repair expenses; or

(2) assess a civil penalty against the property owner for failure to repair, remove, or demolish the building and provide for that assessment, the mode and manner of giving notice, and the means of recovering the assessment.

(c) The municipality may repair a building under Subsection (b) only to the extent necessary to bring the building into compliance with the minimum standards and only if the building is a residential building with 10 or fewer dwelling units. The repairs may not improve the building to the extent that the building exceeds minimum housing standards.

(d) The municipality shall impose a lien against the land on which the building stands or stood, unless it is a homestead as protected by the Texas Constitution, to secure the payment of the repair, removal, or demolition expenses or the civil penalty. Promptly after the imposition of the lien, the municipality must file for record, in recordable form in the office of the county clerk of the county in which the land is located, a written notice of the imposition of the lien. The notice must contain a legal description of the land.

(e) Except as provided by Section 214.001, the municipality's lien to secure the payment of a civil penalty or the costs of repairs, removal, or demolition is inferior to any previously recorded bona fide mortgage lien attached to the real property to which the municipality's lien attaches if the mortgage lien was filed for record in the office of the county clerk of the county in which the real property is located before the date the civil penalty is assessed or the repair, removal, or demolition is begun by the municipality. The municipality's lien is superior to all other previously recorded judgment liens.

(f) Any civil penalty or other assessment imposed under this section accrues interest at the rate of 10 percent a year from the date of the assessment until paid in full.

(g) The municipality's right to the assessment lien may not be transferred to third parties.

(h) In any judicial proceeding regarding enforcement of municipal rights under this section, the prevailing party is entitled to recover reasonable attorney's fees from the nonprevailing party.

(i) A lien acquired under this section by a municipality for repair expenses may not be foreclosed if the property on which the repairs were made is occupied as a residential homestead by a person 65 years of age or older.

(j) The municipality by order may assess and recover a civil penalty against a property owner at the time of an administrative hearing on violations of an ordinance, in an amount not to exceed $1,000 a day for each violation or, if the owner shows that the property is the owner's lawful homestead, in an amount not to exceed $10 a day for each violation, if the municipality proves:

(1) the property owner was notified of the requirements of the ordinance and the owner's need to comply with the requirements; and

(2) after notification, the property owner committed an act in violation of the ordinance or failed to take an action necessary for compliance with the ordinance.

(k) An assessment of a civil penalty under Subsection (j) is final and binding and constitutes prima facie evidence of the penalty in any suit brought by a municipality in a court of competent jurisdiction for a final judgment in accordance with the assessed penalty.

(l) To enforce a civil penalty under this subchapter, the clerk or secretary of the municipality must file with the district clerk of the county in which the municipality is located a certified copy of an order issued under Subsection (j) stating the amount and duration of the penalty. No other proof is required for a district court to enter a final judgment on the penalty.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 49(a), eff. Aug. 28, 1989. Amended by Acts 1989, 71st Leg., ch. 743, Sec. 2, 3, eff. Aug. 28, 1989; Acts 1995, 74th Leg., ch. 359, Sec. 2, eff. Aug. 28, 1995; Acts 2001, 77th Leg., ch. 1420, Sec. 12.105, eff. Sept. 1, 2001.

EXHIBIT #6

CIVIL PRACTICE AND REMEDY CODE ANN

§51.014(A)(8)

Sec. 51.014. APPEAL FROM INTERLOCUTORY ORDER. (a) A person may appeal from an interlocutory order of a district court, county court at law, statutory probate court, or county court that:

(1) appoints a receiver or trustee;

(2) overrules a motion to vacate an order that appoints a receiver or trustee;

(3) certifies or refuses to certify a class in a suit brought under Rule 42 of the Texas Rules of Civil Procedure;

(4) grants or refuses a temporary injunction or grants or overrules a motion to dissolve a temporary injunction as provided by Chapter 65;

(5) denies a motion for summary judgment that is based on an assertion of immunity by an individual who is an officer or employee of the state or a political subdivision of the state;

(6) denies a motion for summary judgment that is based in whole or in part upon a claim against or defense by a member of the electronic or print media, acting in such capacity, or a person whose communication appears in or is published by the electronic or print media, arising under the free speech or free press clause of the First Amendment to the United States Constitution, or Article I, Section 8, of the Texas Constitution, or Chapter 73;

(7) grants or denies the special appearance of a defendant under Rule 120a, Texas Rules of Civil Procedure, except in a suit brought under the Family Code;

(8) grants or denies a plea to the jurisdiction by a governmental unit as that term is defined in Section 101.001;

(9) denies all or part of the relief sought by a motion under Section 74.351(b), except that an appeal may not be taken from an order granting an extension under Section 74.351;

(10) grants relief sought by a motion under Section 74.351(l);

(11) denies a motion to dismiss filed under Section 90.007;

(12) denies a motion to dismiss filed under Section 27.003;

(13) denies a motion for summary judgment filed by an electric utility regarding liability in a suit subject to Section 75.0022; or

(14) denies a motion filed by a municipality with a population of 500,000 or more in an action filed under Section 54.012(6) or 214.0012, Local Government Code.

EXHIBIT #7

TEXAS CIVIL PRACTICE AND REM.

§37.004

Sec. 37.004. SUBJECT MATTER OF RELIEF. (a) A person interested under a deed, will, written contract, or other writings constituting a contract or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder.

(b) A contract may be construed either before or after there has been a breach.

(c) Notwithstanding Section 22.001, Property Code, a person described by Subsection (a) may obtain a determination under this chapter when the sole issue concerning title to real property is the determination of the proper boundary line between adjoining properties.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 305 (H.B. 1787), Sec. 1, eff. June 15, 2007.

EXHIBIT #8

TEXAS CIVIL PRACTICE AND REM.

§37.006 (a) (b)

Sec. 37.006. PARTIES. (a) When declaratory relief is sought, all persons who have or claim any interest that would be affected by the declaration must be made parties. A declaration does not prejudice the rights of a person not a party to the proceeding.

(b) In any proceeding that involves the validity of a municipal ordinance or franchise, the municipality must be made a party and is entitled to be heard, and if the statute, ordinance, or franchise is alleged to be unconstitutional, the attorney general of the state must also be served with a copy of the proceeding and is entitled to be heard.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

EXHIBIT #9

TEXAS CIVIL PRACTICE AND REM. CODE ANN.

§16.026

Sec. 16.026. ADVERSE POSSESSION: 10-YEAR LIMITATIONS PERIOD. (a) A person must bring suit not later than 10 years after the day the cause of action accrues to recover real property held in peaceable and adverse possession by another who cultivates, uses, or enjoys the property.

(b) Without a title instrument, peaceable and adverse possession is limited in this section to 160 acres, including improvements, unless the number of acres actually enclosed exceeds 160. If the number of enclosed acres exceeds 160 acres, peaceable and adverse possession extends to the real property actually enclosed.

(c) Peaceable possession of real property held under a duly registered deed or other memorandum of title that fixes the boundaries of the possessor's claim extends to the boundaries specified in the instrument.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 764, Sec. 1, eff. Sept. 1, 1989.

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Tina Rosales on behalf of Sam Adams
Bar No. 24003680
tina.rosales@sanantonio.gov
Envelope ID: 44962100
Status as of 07/31/2020 08:15:52 AM -05:00

Associated Case Party: City of San Antonio

Name	BarNumber	Email	TimestampSubmitted	Status
Savita Rai		savita.rai@sanantonio.gov	7/30/2020 11:53:15 AM	SENT
Sam Adams		samuel.adams@sanantonio.gov	7/30/2020 11:53:15 AM	SENT

Associated Case Party: Arturo Lopez

Name	BarNumber	Email	TimestampSubmitted	Status
Samira MeryLineberger		sml@linebergerlawfirm.com	7/30/2020 11:53:15 AM	SENT